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**FILED**

OCT 28 1993

4 Attorney for Defendant  
5 GERALD ARMSTRONG and  
6 THE GERALD ARMSTRONG CORPORATION

HOWARD HANSON  
MARIN COUNTY CLERK  
BY D. ROSS, DEPUTY

8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 FOR THE COUNTY OF MARIN

11 CHURCH OF SCIENOTOLOGY INTERNATIONAL, )  
a California not-for-profit )  
12 religious corporation, )  
13 Plaintiff, )  
14 vs. )  
15 GERALD ARMSTRONG; MICHAEL WALTON; )  
THE GERALD ARMSTRONG CORPORATION, )  
16 a California for-profit )  
corporation; DOES 1 through 100, )  
17 inclusive, )  
18 Defendants. )  
19

No. 157 680

DEFENDANTS' EVIDENCE  
IN SUPPORT OF DEFENDANTS'  
MOTION TO COMMENCE  
COORDINATION PROCEEDINGS

Date: November 12, 1993  
Time: 9:00 a.m.  
Dept: One  
Trial Date: None Set

20  
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23 VOLUME TWO  
24  
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**RECEIVED**  
OCT 28 1993  
HUB LAW OFFICES

**COPY**

1 INDEX TO EXHIBITS

2  
3 Volume One

4  
5 EXHIBIT 1: Declaration of Ford Greene Authenticating Documents  
6 in litigation between Scientology and Gerald  
Armstrong.

7 Exhibit 1 (a): Memorandum of Intended Decision filed  
8 June 22, 1984 in Church of Scientology of  
9 California v. Gerald Armstrong, Los  
Angeles Superior Court, Case No. C  
420 153 ("Armstrong I");

10 Exhibit 1 (b): Declaration of Gerald Armstrong filed  
11 September 14, 1993 in Church of  
12 Scientology International v. Armstrong,  
Los Angeles County Superior Court, Case  
No. BC 084 642 ("Armstrong III");

13 Exhibit 1 (c): Complaint in Church of Scientology  
14 International v. Armstrong, Los Angeles  
County Superior Court, Case No. BC 052  
395 ("Armstrong II");

15 Exhibit 1 (d): Complaint in Armstrong III

16  
17 Volume Two

18 Exhibit 1 (e): Memorandum of Points And Authorities In  
19 Support of Motion To Dismiss Or Stay Or  
20 Transfer To Los Angeles Superior Court  
filed March 5, 1992 in Armstrong II;

21 Exhibit 1 (f): Minute Order dated March 20, 1992, in  
22 Armstrong II granting Armstrong's motion  
to transfer case from Marin County  
23 Superior Court to Los Angeles County  
Superior Court

24 Exhibit 1 (g): Motion for Preliminary Injunction brought  
25 by Scientology in Armstrong II on May 7,  
1992;

26 Exhibit 1 (h): Transcript of Proceedings on Motion for  
27 Preliminary Injunction, May 27, 1992, in  
Armstrong II;

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Exhibit 1 (i): Minute Order dated May 27, 1992, in Armstrong II partially granting preliminary injunction;

Volume Three

Exhibit 1 (j): Notice of Appeal of Preliminary Injunction in Armstrong II;

Exhibit 1 (k): Order To Show Cause Why Gerald Armstrong Should Not Be Held In Contempt filed December 31, 1992, in Armstrong II;

Exhibit 1 (l): Transcript of Proceedings of March 5, 1993, in Armstrong II;

Exhibit 1 (m): Excerpt of Transcript of Proceedings of December 23, 1991, in Armstrong I;

Exhibit (n): Minute Order filed March 23, 1993, in Armstrong II, staying all proceedings pending resolution of legality of settlement contract on appeal;

Volume Four

Exhibit 1 (o): Minute Order filed August 27, 1993, in Armstrong III ordering it transferred before Hon. David Horowitz;

Exhibit 1 (p): Minute Order filed October 6, 1993, in Armstrong III ordering it consolidated with Armstrong II and staying both actions pending ruling from the Court of Appeal;

Exhibit 1 (q): First Amended Answer in Armstrong II filed October 8, 1992.

Exhibit 1 (r): [Draft] Petition for Coordination herein.

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4 Attorney for Defendant  
5 GERALD ARMSTRONG

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by P. Fan, Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 IN AND FOR THE COUNTY OF MARIN

11 CHURCH OF SCIENTOLOGY )  
INTERNATIONAL, a California )  
12 not-for-profit religious )  
corporation; )  
13 )  
Plaintiffs, )  
14 )  
vs. )  
15 )  
GERALD ARMSTRONG; DOES 1 )  
16 through 25, inclusive, )  
17 )  
Defendants. )

No. 152 229  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION TO DISMISS OR STAY  
OR TRANSFER TO LOS ANGELES  
SUPERIOR COURT

Date: March 20, 1992  
Time: 9:00 a.m.  
Dept: Four (4)  
Trial/Arbitration: None

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5 GERALD ARMSTRONG

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 IN AND FOR THE COUNTY OF MARIN

10  
11 CHURCH OF SCIENTOLOGY ) No. 152 229  
INTERNATIONAL, a California )  
12 not-for-profit religious ) MEMORANDUM OF POINTS AND  
corporation; ) AUTHORITIES IN SUPPORT OF  
13 ) MOTION TO DISMISS OR STAY  
Plaintiffs, ) OR TRANSFER TO LOS ANGELES  
14 ) SUPERIOR COURT  
vs. )  
15 )  
16 GERALD ARMSTRONG; DOES 1 )  
through 25, inclusive, )  
17 ) Date: March 20, 1992  
Defendants. ) Time: 9:00 a.m.  
18 ) Dept: Four (4)  
Trial/Arbitration: None

19 INTRODUCTION

20 When Gerald Armstrong executed the settlement agreement on  
21 December 6, 1986, a material provision was the forum selection  
22 clause set forth in Paragraph 20. The Hon. Paul G. Breckenridge,  
23 Jr., presided over the trial of Scientology's complaint against  
24 Armstrong in Church of Scientology of California v. Armstrong, Los  
25 Angeles Superior Court, Case No. C 420 153 ("Armstrong I"), and  
26 was set to preside over the trial of Armstrong's Cross-Complaint  
27 against Scientology. Based upon his experience at trial as a  
28 defendant with Judge Breckenridge, Armstrong believed that Court



1 was sufficiently intelligent, educated regarding the nature and  
2 practices of Scientology, and fair, to be able to manage what  
3 Armstrong was convinced would be post-settlement disputes  
4 regarding the scope and effect of the settlement agreement.  
5 Declaration of Gerald Armstrong (Armstrong Decl.), Exhibit 2 at ¶¶  
6 4, 5 . Thus, the assurance of the protection of said Court <sup>1/</sup>  
7 which had treated him fairly was material to Mr. Armstrong's  
8 decision to settle. Id. at ¶. 5.

9       Scientology will claim that the Los Angeles Superior Court  
10 held that it does not have jurisdiction in this matter. This is  
11 not true. On December 23, 1991 Judge Geernaert made a narrow  
12 jurisdictional determination on the specific question whether  
13 without any type of evidentiary hearing he could enforce terms of  
14 the settlement agreement when that agreement had never been before  
15 the court, not to mention never having been incorporated into an  
16 order or judgment. <sup>2/</sup> He denied Scientology's motion that he do

17 \_\_\_\_\_  
18       <sup>1</sup> Since Judge Breckenridge has retired, Hon. Bruce R.  
19 Geernaert has been "presented with Judge Breckenridge's function"  
of presiding over post-settlement matters between Defendant  
Armstrong and Scientology. Exhibit 1-A at 10:24-25.

20       <sup>2</sup> Judge Geernaert said that an evidentiary hearing was  
21 necessary because was there no order upon which he could act and  
22 because the "circumstances involved in entering into the  
23 agreement, the equitable concept of unclean hands, the public  
24 policy concerning any of the provisions sought to be enforced"  
25 required more from an "evidentiary standpoint." Exhibit 1-A at  
26 11:13-18, 15:18-24. He criticized the agreement as "very broad  
27 and unclear . . . [and] to read the whole agreement, you come up  
28 with a wonderment as to what was mutual about it . . . you also  
wonder to what extent offering assistance . . . would be a term  
that any court would put in its order." Id. 12:19-28. Judge  
Geernaert said the agreement was "so unclear . . . so ambiguous  
and . . . one-sided, . . . that it was entered into for the  
reasons he says were anything but voluntary" and thus merited a  
hearing. Id. at 22:3-23:5. He refused to act as Scientology's  
"rubber stamp," Id. at 17:6, and required a "judicial proceeding,  
not the one on the [video] tape." Id. at 13:9-10.

1 just that, making the common-sense determination that where there  
2 has been no order, there cannot be jurisdiction to enforce what is  
3 claimed to be a violation thereof.

4 The theory of this motion is that the settlement agreement  
5 contains a forum selection clause that was predicated upon  
6 Defendant Armstrong's valuation of, and his trust and belief in  
7 the fair judgment of, the trial judge Paul G. Breckenridge, Jr.,  
8 upon which Defendant Armstrong relied in order to justify the risk  
9 of further abuse by Scientology that to Armstrong the settlement  
10 represented. Armstrong Decl. AT ¶ 6.

11 STATEMENT OF FACTS

12 Before fully addressing Armstrong's theory, it is necessary  
13 to put his case into accurate past and present perspective.

14 One reason for this is to address, in advance,  
15 misrepresentations of the record. For example, at page 19, lines  
16 4-16 of its Memorandum of Points and Authorities in Support of  
17 Plaintiff's Motion for Preliminary Injunction for Breach of  
18 Contract, plaintiff has asserted that

19 . . . on December 3, 1991, the [Scientology Organization]  
20 filed a motion in Los Angeles Superior Court for Enforcement  
21 of the Settlement Agreement . . . the motion failed only  
22 because the Court determined that it lacked jurisdiction,  
23 since the case itself had already been settled. With a new  
24 action before the Court, an injunction should and must issue  
25 to preserve the [Scientology Organization's] rights pending  
26 trial.

27 This is an incomplete, if not incorrect, statement of the  
28 facts generated during the course of the December 23, 1991 hearing  
in Armstrong I before the Hon. Bruce R. Geernaert.

Judge Geernaert simply held that, at least without a

1 hearing, <sup>3/</sup> he lacked the particular type of jurisdiction that  
2 Scientology asked him to assert: to enforce the draconian terms  
3 of settlement as though such terms had previously existed as an  
4 order of the court despite the fact that Scientology had never  
5 presented the agreement to the trial judge. Judge Geernaert found  
6 that at no time had there ever been a judgment or order  
7 incorporating the terms of settlement, and that there was no  
8 basis, e.g. no order, for him to enforce because the settlement  
9 agreement had never been presented to the court. See, Exhibit 1-A  
10 at 40:19-22, 41:17-20, 43:17-27, 45:12-16, 47:6-48:10, 49:5-7,  
11 51:17-52:25, 53:5-11. <sup>4/</sup>

12 Five years before Scientology's December 1991 effort to make  
13 Judge Geernaert enforce against Defendant ARMSTRONG the terms of  
14 an agreement that had never seen the inside of a courtroom, and  
15 after successfully defending Scientology's attack in Armstrong I  
16 for allegedly "stealing" documents belonging to L. Ron Hubbard,  
17 ARMSTRONG was poised to take to trial his Cross-Complaint for  
18 intentional infliction of emotional distress, fraud and invasion  
19 of privacy on January 17, 1987. Armstrong Decl. at ¶ 4.

20 The facts to be proved at said trial had already been  
21 partially sketched by Judge Breckenridge when on June 22, 1984, he

22 \_\_\_\_\_  
23 <sup>3</sup> Scientology attorney Michael L. Hertzberg argued that no  
24 hearing was required. Exhibit 1-A at 20:23-12.

25 <sup>4</sup> Indeed, Judge Breckenridge twice noted that the parties  
26 file the settlement agreement. Exhibit 1-I, Minute Orders of  
27 12/12/86 and 12/17/86. After ignoring those orders from Judge  
28 Breckenridge, Scientology asked Judge Geernaert to use the court's  
authority against ARMSTRONG, as though Judge Breckenridge had  
ordered ARMSTRONG to conform to the settlement agreement, when the  
essence and the terms of the settlement which had been withheld  
from the Court. Exhibit 1-C, Reporter's Transcript of  
Proceedings, Thursday, December 11, 1986.

1 filed his Memorandum of Intended Decision wherein he found:

2 After the within lawsuit was filed on August 2, 1982,  
3 Defendant Armstrong was the subject of harassment, including  
4 being followed and surveilled by individuals who admitted  
5 employment by Plaintiff; being assaulted by one of these  
6 individuals; being struck bodily by a car driven by one of  
7 these individuals; having two attempts made by said  
8 individuals apparently to involve Defendant Armstrong in a  
9 freeway automobile accident; having said individuals come  
10 onto Defendant Armstrong's property, spy in his windows,  
11 create disturbances, and upset his neighbors.

12 Appendix to Breckenridge Opinion at 14:22-15:3, Exhibit 1-B.

13 The disrespect, assault and abuse against ARMSTRONG as  
14 detailed by Judge Breckenridge was predicated upon Scientology's  
15 implementation of its notorious penchant for retribution,  
16 institutionalized as the infamous "Fair Game Policy." <sup>5</sup>/  
17

18 At the time of settlement ARMSTRONG was convinced that Judge  
19 Breckenridge knew and understood the nature of Scientology's  
20

21 <sup>5</sup> The Second District has determined that ARMSTRONG was  
22 subjected to Scientology's Fair Game Policy "which permits a  
23 suppressive person to be tricked, sued or lied to or destroyed ...  
24 or deprived of property or injured by any means by any  
25 Scientologist . . ." Church of Scientology v. Armstrong (1991)  
26 232 Cal.App.3d 1060, 1067, 283 Cal.Rptr. 917. See also, Church  
27 of Scientology v. Wollersheim (1989) 212 Cal.App.3d 872, 888-91,  
28 260 Cal.Rptr. 331; Allard v. Church of Scientology (1976) 58  
29 Cal.App.3d 439, 443, n.1, 129 Cal.Rptr. 797; United States v.  
30 Kattar (1st Cir.1988) 840 F.2d 118, 125; Van Shaick v. Church of  
31 Scientology (U.S.D.C. Mass.1982) 535 F.Supp. 1125, 1131 n.4;  
32 Christoffersen v. Church of Scientology (1982) 57 Ore.App. 203,  
33 644 P.2d 577, 590-92; Church of Scientology v. Commissioner of  
34 Internal Revenue (1984) 83 T.C. 381, 411-12, aff'd, 823 F.2d 1310  
35 (9th Cir. 1987). No one, not even judges, is beyond the scope of  
36 "Fair Game." Declaration of Ford Greene (Greene Decl.), Exhibit  
37 1-Q. American Lawyer, 12/80, "Scientology's War Against the  
38 Judges."

39 A corollary to the Fair Game Policy is Scientology's Policy  
40 Letter of 25 February 1966 entitled "Attacks of Scientology."  
41 Therein, the policy is laid out to "[s]pot who is attacking us"  
42 and to "[s]tart feeding lurid, blood, sex, crime actual evidence  
43 on the attacker to the press." Armstrong Decl. Exhibit 2-B. It  
44 is the implementation of Fair Game and Attack the Attacker that  
45 has spurred the allegations underlying Scientology's claims in the  
46 instant lawsuit. Armstrong Decl. at ¶ 6.

1 "religious" practices, unlike many courts which are bombarded by  
2 the outrageous paper burden and science fiction claims built into  
3 Scientology litigation. Armstrong Decl. at ¶ 5. ARMSTRONG  
4 trusted Judge Breckenridge's judgment regarding the tactics and  
5 strategies of the Scientology Organization and felt relatively  
6 comfortable in his hands. Id. at ¶ 10.

7 Thus, as one of the legitimate objects of settlement (and one  
8 of two in Armstrong's favor), <sup>6</sup>/ the settlement agreement  
9 provisions provided a forum selection clause in the event any  
10 litigation regarding the settlement was generated in the future.

11 On December 11, 1986, Armstrong's attorney, Michael J. Flynn  
12 and Scientology attorneys John G. Peterson, Michael Lee Hertzberg  
13 and Lawrence E. Heller appeared, ex parte, before Judge  
14 Breckenridge and announced that they had settled Cross-Complainant  
15 Armstrong's Cross-Complaint in Armstrong I. Exhibit 1-C,  
16 Reporter's Transcript of Proceedings, Thursday, December 11, 1986.  
17 At that time said attorneys submitted a Joint Stipulation of  
18 Dismissal, Exhibit 1-D; an Order Dismissing Action With  
19 Prejudice, Exhibit 1-E; a Stipulation for Return of Sealed  
20 Materials and Exhibits, Exhibit 1-F; Order for Return of  
21 Exhibits and Sealed Documents, 1-G; and a Stipulated Sealing  
22

---

23 <sup>6</sup> As ARMSTRONG will argue in his opposition to injunctive  
24 relief, the provisions Scientology seeks to enforce against him  
25 are severable from the contract as void and unenforceable  
26 violations of public policy. Civil Code § 1599. Not the entire  
27 object of the contract, however, is necessarily illegitimate. It  
28 is ARMSTRONG's position that should any part of the agreement  
survive its pervasive illegality, the dismissal of his cross-  
complaint at the threshold of trial in Armstrong I was supported  
by the promise set forth in the forum selection clause that all  
further proceedings, if any, would be held before the judge who  
had treated him fairly.

1 Order, Exhibit 1-H. The filing of said documents was spelled out  
2 in the Court's minute order dated December 11, 1986. Exhibit 1-I.

3 On December 12, 1986, Judge Breckenridge through his clerk,  
4 noted that the settlement agreement referred to in the Joint  
5 Stipulation of Dismissal and Order Dismissing Action had not been  
6 filed. Exhibit 1-J. The settlement agreement never was filed  
7 with the Los Angeles Court because according to Scientology's  
8 attorney, it was "irrelevant." Exhibit 1-A at 28:24-26.

9 Notwithstanding the fact that Scientology had failed comply  
10 with the Order Dismissing Action it provided to Judge Breckenridge  
11 and file the agreement, it brought a motion to enforce that  
12 agreement. Exhibit 1-K. Armstrong opposed that motion, Exhibit  
13 1-L, and Scientology replied. Exhibit 1-M. After Armstrong filed  
14 a supplemental memorandum on the issue of jurisdiction, Exhibit  
15 1-N, Scientology filed its additional reply. Exhibit 1-O.

16 ARGUMENT

17 I. PARAGRAPH 20 IS A FORUM SELECTION CLAUSE  
18 WHEREBY THE PARTIES CONTRACTED THAT LOS ANGELES  
19 SUPERIOR COURT WOULD BE THE FORUM FOR ALL ACTIONS  
20 AND PROCEEDINGS WHICH AROSE FROM THE SETTLEMENT AGREEMENT.

21 Paragraph 20 of the settlement agreement states in full:

22 Notwithstanding the dismissal of the lawsuit pursuant to  
23 Paragraph 4 of this Agreement, the parties hereto agree that  
24 the Los Angeles Superior Court shall retain jurisdiction to  
25 enforce the terms of this Agreement. This Agreement may be  
26 enforced by any legal or equitable remedy, including but not  
27 limited to injunctive relief or declaratory judgment where  
28 appropriate. In the event that any party to this Agreement  
institutes any action to preserve, to protect or to enforce  
any right or benefit created hereunder, the prevailing party  
in any such action shall be entitled to the costs of suit and  
reasonable attorney's fees.

Exhibit 2-C.

The Code of Civil Procedure states that the two existing

1 classes of judicial remedies are "actions" and "special  
2 proceedings." C.C.P. § 21. An "action" can be civil or  
3 criminal, C.C.P. § 24, and is "an ordinary proceeding in a court  
4 of justice by which one party prosecutes another for the  
5 declaration, enforcement, or protection of a right, the redress or  
6 prevention of a wrong, or the punishment of a public offense.  
7 C.C.P. § 22. Thus, based upon the express terms of Paragraph 20  
8 in conjunction with the foregoing definitions, it is clear that  
9 said paragraph is a forum selection clause.

10 Although historically not favored by American courts, M/S  
11 Bremen v. Zapata Off-Shore Co. (1972) 407 U.S. 1, 9, 32 L.Ed.2d  
12 513, it is settled that parties to a contract may agree in advance  
13 to submit to the jurisdiction of a given court and absent some  
14 "compelling and countervailing reason it should be honored by the  
15 parties and enforced by the courts." Id. 407 U.S. at 11. Thus,  
16 for almost 20 years California has upheld the validity of such  
17 clauses.

18 . . . we are in accord with the modern trend which favors  
19 enforceability of such forum selection clauses. [Citations.]  
20 . . . we conclude that forum selection clauses are valid and  
21 may be given effect, in the court's discretion and in the  
22 absence of a showing that enforcement of such a clause would  
23 be unreasonable.

24 Smith, Valentino & Smith, Inc. v. Superior Court of Los Angeles  
25 County (1976) 17 Cal.3d 491, 495-96, 131 Cal.Rptr. 374; Lifeco  
26 Services Corp. v. Superior Court (1990) 222 Cal.App.3d 331, 334-  
27 35, 271 Cal.Rptr. 385.

28 Code of Civil Procedure section 418.10 entitles a defendant  
on or before the last day of his time to plead to serve and file a  
motion to dismiss or stay the action on the ground of inconvenient

1 forum. An inconvenient forum holding may be obtained when the  
2 court finds it in the interest of substantial justice to do so.  
3 C.C.P. § 410.30. A contractual forum selection claim requires a  
4 court to decline jurisdiction "on the ground that the plaintiff  
5 has unfairly or unreasonably invoked the jurisdiction of an  
6 inconvenient forum." Furda v. Superior Court (Serological Biopsy)  
7 (1984) 161 Cal.App.3d 418, 424-25, 207 Cal.Rptr. 646.

8 As a further legal basis for Defendant Armstrong's motion,  
9 Code of Civil Procedure section 396b (a) provides that at on or  
10 before the time to respond to a Complaint, the Defendant may file  
11 a noticed motion to transfer the action or proceeding to the  
12 proper court. Upon hearing the motion, the court shall, if it  
13 appears that the action or proceeding was not commenced in the  
14 proper court, order the action transferred to the proper court.

15 Id.

16 The instant case is not in the proper court. Rather than  
17 abide by the forum selection clause of the very agreement that  
18 Scientology asks the Court to enforce against Defendant Armstrong,  
19 Scientology disregards provisions of the agreement when to do so  
20 suits its forum shopping purposes, and after it has accomplished  
21 an end-run around the Los Angeles Superior Court, the Court which  
22 best knows the case, it seeks to enforce other provisions of the  
23 agreement in a jurisdiction which knows virtually nothing of the  
24 long history of antecedent litigation. Based upon such expedient  
25 conduct, Scientology should be estopped from asserting any  
26 position contrary that which the forum selection clause requires.  
27 Scientology is afraid of the Court which knows it best. Instead,  
28 it has come to Marin County to seek relief it may have a lesser



1 chance of obtaining in Los Angeles. In Marin County, Scientology  
2 also accomplished the goal of escaping from the potential further  
3 review of the appellate court that is familiar with the appeal of  
4 Armstrong I. Church of Scientology v. Armstrong, supra, 232  
5 Cal.App.3d 1060.

6 In order to be able to fully understand the gravity of the  
7 arguments in this case why certain contractual provisions should  
8 be severed and declared unenforceable as violative of public  
9 policy, it is necessary for the full available record of Armstrong  
10 I to be available to the Court in order for the Court to be able  
11 to review what Scientology is trying to suppress. That file is in  
12 Los Angeles, not in Marin County. That is why Scientology has  
13 disregarded the forum selection clause and brought the instant  
14 action in this Court.

15 **II. REQUEST FOR JUDICIAL NOTICE**

16 Pursuant to Evidence Code section 451, Defendant Armstrong  
17 requests this Court to take judicial notice of the court's file in  
18 Church of Scientology of California v. Gerald Armstrong, Los  
19 Angeles Superior Court Case No. C 420 153. Copies of documents in  
20 that case are submitted herewith as Exhibits 1-A through 1-0. See  
21 Declaration of Ford Greene, Exhibit 1-A through 1-0.

22 **III. THE COURT SHOULD AWARD SANCTIONS**  
23 **AGAINST PLAINTIFF AND ITS ATTORNEYS**  
24 **FOR RESISTING THE INSTANT MOTION.**

25 Code of Civil procedure section 396b (b) provides the Court  
26 with authority to award reasonable expenses and attorney's fees in  
27 making the motion to transfer. In determining whether or not to  
28 make such an order, the Court must take into consideration (1)  
whether an offer to stipulate to change of venue was reasonably

1 made and rejected, and (2) whether the motion for transfer, or  
2 selection of venue, was made in good faith given the facts and law  
3 the party making the motion or selecting the venue knew or should  
4 have known. Ibid.

5 In this case, Armstrong's counsel made an offer, in writing,  
6 to stipulate to the transfer of the action to Los Angeles Superior  
7 Court. Exhibit 1-Q. No response has been received to said offer.

8 CONCLUSION

9 Since Scientology is in Marin County seeking to enforce an  
10 agreement which, by the express terms of Paragraph 20 thereof,  
11 requires such an enforcement effort to be prosecuted in the  
12 Superior Court of Los Angeles, this Court should either dismiss  
13 the action outright, stay the same, or transfer it to Los Angeles  
14 Superior Court.

15 DATED: March 5, 1992

HUB LAW OFFICES

16  
17 BY: 

FORD GREENE  
Attorney for Defendant  
GERALD ARMSTRONG

SUPERIOR COURT OF CALIFORNIA, MARIN COUNTY

DATE: 3/20/92 COURT MET AT 9:05 Am DEPARTMENT NO. 4  
 PRESENT: HON. Michael B. Dufficy JUDGE A Cooper DEPUTY CLERK  
Margaret Cordova REPORTER Al Wong BAILIFF

TITLE:  
Church of Scientology of International  
 vs.  
Gerald Armstrong, et al

COUNSEL:  
Andrew Wilson  
Laurie Bartilson  
Graham Berry  
Ford Greene

NATURE OF PROCEEDINGS: Motions ACTION NO. 152229

This matter comes before the Court on the following motions:

1. Motion to Dismiss/Stay + Transfer to L.A.
2. Motion to Intervene
3. Application by Mr. Hertzberg to address this Court.
4. Protective Order
5. Motion for Preliminary Injunction
6. Evidentiary Hearing
7. Motion for Sanctions

Appearances as noted above.

The Court hears argument re media filming.  
 Filming is allowed.

Argument re transferring matter to L.A. (Defense argument)

Argument re preliminary injunction (plaintiff argument)

Mr. Hertzberg addresses the Court re <sup>previous</sup> ruling of jurisdiction + venue.

Argument in opposition by Mr. Greene

Mr. Berry presents argument + joins with Mr. Greene (T.R.O.)

Mr. Wilson argues to restrain the defendant re T.R.O.)

Submitted.

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE  
COUNTY OF MARIN

DATE 3/20/92 AT 9:05 AM, Dist. 4 CONTINUED

ABBREVIATED TITLE Church of Scientology vs. Armstrong, et al ACTION NO. 152229

The Court makes the following order,

Change of Venue is granted. The Court will allow the T.R.O. to remain in effect for an additional 45 days to allow all counsel time to file in L.A. County. The remainder of the motions will be presented & argued in L.A. County. Mr. Wilson to prepare order.

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8 Attorneys for Plaintiff  
CHURCH OF SCIENTOLOGY INTERNATIONAL

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF LOS ANGELES

11 CHURCH OF SCIENTOLOGY OF ) Case No. BC 052395  
12 INTERNATIONAL, a California )  
not-for-profit religious ) AMENDED MEMORANDUM OF POINTS  
13 corporation; ) AND AUTHORITIES IN SUPPORT OF  
14 ) PLAINTIFF'S MOTION FOR PRELIMINARY  
15 ) INJUNCTION FOR BREACH OF  
16 ) CONTRACT  
17 )  
18 Plaintiff, )  
19 vs. ) DATE: May 14, 1992  
20 GERALD ARMSTRONG and DOES 1 ) TIME: 8:30 a.m.  
through 25, inclusive, ) DEPT: 86  
21 Defendants. ) DISCOVERY CUTOFF: None  
22 ) MOTION CUTOFF: None  
23 ) TRIAL DATE: None  
24 )  
25 )  
26 )  
27 )  
28 )

**FILED**

MAY 07 1992

*JH*  
JAMES H. DEMPSEY, CLERK

*Margarita Reinoso*  
BY MARGARITA REINOSO, DEPUTY

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1 I. PRELIMINARY STATEMENT

2 In December, 1986, plaintiff Church of Scientology International ("the  
3 Church" or "plaintiff") sought to end a period of long and bitter  
4 harassment and attack from former-member Gerald Armstrong ("Armstrong" or  
5 "defendant"). Armstrong, who had been expelled from the Scientology  
6 religion after stealing confidential documents belonging to the religion's  
7 Founder, L. Ron Hubbard, entered into a campaign of activities, both overt  
8 and covert, intended to divide Church members from the ecclesiastical  
9 leaders of the Church, forge incriminating documents and plant them in  
10 Church files, stage a raid on Church facilities by government officials on  
11 the basis of the forged documents planted in Church files, get Church  
12 members to disaffect and file lawsuits against the Church on the basis of  
13 naked allegations insupportable by any evidence and, in Armstrong's own  
14 words, "to create as much s--- as possible" for the Church. [See Ex. 3,  
15 Declaration of Lynn F. Farny ("Farny Decl."), ¶ 7.]

16 Armstrong's bitter and lengthy campaign was ended, or so plaintiff  
17 thought, when he entered into a confidential Settlement Agreement (the  
18 "Agreement") with plaintiff in 1986. The terms of the Agreement required  
19 Armstrong not merely to end his own litigation against plaintiff, but among  
20 other things, also required Armstrong to refrain from aiding others in  
21 litigation, to return to the Church the documents which he had stolen and  
22 all copies of them, to refrain from discussing with third parties his  
23 experiences with the Scientology faith, and to keep confidential all terms  
24 of the Agreement itself. This amicable settlement was achieved only after  
25 careful and extensive negotiations. [Ex. 4, Declaration of Lawrence E.  
26 Heller ("Heller Decl."), ¶ 2.]

27 Unfortunately, an amicable separation was not to be. Despite a  
28 carefully drawn mutually acceptable Agreement, Armstrong is at it again.



1 Since June, 1991, Armstrong has, by his own admissions:

2 - Provided aid to anti-Church litigants Vicki and Richard Aznaran<sup>1</sup>  
3 and Joseph Yanny<sup>2</sup> through declarations purporting to describe Armstrong's  
4 Scientology experiences, along with copies of documents that Armstrong  
5 agreed to keep confidential, including the Agreement;

6 - Performed paralegal services for Yanny in the Aznarans' case; and

7 - Performed paralegal services in the Aznarans' case for the  
8 Aznarans' present attorney, Ford Greene, which continues to the present.

9 Rather than deny these activities, all of which violate the Agreement,  
10 Armstrong boasts of them.<sup>3</sup> To put an end to Armstrong's unlawful campaign  
11 once and for all, the Church requests the entry of this preliminary  
12 injunction to enjoin Armstrong from committing further and continuous  
13 breaches of his Agreement while the effects of his earlier breaches are  
14 adjudicated.<sup>4</sup>

---

15  
16 <sup>1</sup> Vicki Aznaran is the former president of another entity affiliated  
17 with the Scientology faith, Religious Technology Center. She and her  
18 husband Richard, a former employee of the plaintiff Church, are involved in  
19 litigation against plaintiff and other Church parties, Vicki Aznaran, et  
20 al. v. Church of Scientology of California, et al., United States District  
21 Court for the Central District of California, No. CV 88-1786 JMI (Ex).

22 <sup>2</sup> Joseph Yanny is the former attorney for the Church and is also a  
23 defendant in a pending action, Religious Technology Center, Church of  
24 Scientology International and Church of Scientology of California v. Joseph  
25 A. Yanny ("Yanny 2"), LASC No. BC-033035, in which he has been enjoined  
26 from legal representation of Armstrong against his former clients.

27 <sup>3</sup> The Church's pleas and requests that he honor his Agreement have proven  
28 fruitless; rather, Armstrong, having spent the proceeds of his earlier hate  
campaign, seems bent on extorting still more money from this plaintiff with  
his outrageous conduct. On a daily and continuous basis, Armstrong is  
working to poison proceedings involving current anti-Church litigants,  
impeding any hope of resolving those cases short of a lengthy and expensive  
trial.

<sup>4</sup> See, e.g., Exhibits 1F, 1J and 1K to Request for Judicial Notice  
("Request") and Exhibit 2B to Declaration of Andrew H. Wilson ("Wilson  
Decl.")

1 II. STATEMENT OF FACTS

2 A. The Settlement Agreement

3 In December, 1986, the Church entered into the Agreement with  
4 Armstrong. The Agreement provided for a mutual release and waiver of all  
5 claims arising out of a cross-complaint which defendant Armstrong had filed  
6 in Church of Scientology of California v. Gerald Armstrong, Los Angeles  
7 Superior Court No. C 420153.<sup>5</sup> The Agreement included multiple clauses  
8 designed to guarantee that new actions were not spawned or encouraged by  
9 the conclusion of the old one.<sup>6</sup> These clauses included provisions that  
10 Armstrong would not: (1) assist or advise anyone else engaged in litigation  
11 adverse to the interests of the Church; (2) testify or otherwise  
12 participate in any other judicial proceeding adverse to the Church unless  
13 compelled to do so by lawful subpoena; (3) disclose documents at issue in  
14 the case; or (4) disclose to anyone the terms of the Agreement itself.<sup>7</sup>  
15 The Church had good reason for negotiating these particular clauses with  
16 Armstrong. In addition to his own litigation, Armstrong fomented  
17 significant additional litigation against the Church and other Churches of  
18 Scientology, stirring up enmities of other former members. Moreover,  
19 Armstrong became involved in plot after clandestine plot to take over or

20  
21  
22 <sup>5</sup> The signatories to the Agreement were Gerald Armstrong and the Church  
23 of Scientology International, by its President, Heber Jentzsch. [Ex. 2A to  
24 Wilson Decl.] Mr. Armstrong's signature was witnessed by Jo Ann Richardson  
and Michael Sutter, and the Agreement was signed with approval as to form  
and content by Mr. Armstrong's attorney, Michael Flynn. [Id.]

25 <sup>6</sup> See specifically ¶¶ 7(H), 7(G), 10, 7(D), 18(D), 20 of Exhibit 2A, the  
26 Agreement.

27 <sup>7</sup> Armstrong also agreed that damages for violations of the nondisclosure  
28 provisions would be a liquidated amount of \$50,000 per disclosure.

1 even destroy his former religion.<sup>8</sup>

2 Armstrong received a portion of a total settlement paid to his  
3 attorney, Michael Flynn, in a block settlement concerning all of Mr.  
4 Flynn's clients who were in litigation with any Church of Scientology or  
5 related entity. The exact portion of the settlement which Armstrong  
6 received was maintained as confidential between Mr. Flynn and Armstrong.

7 ///

8 ///

9  
10 <sup>8</sup> In November, 1984, for example, Armstrong was plotting against the  
11 Scientology Churches and seeking out staff members in the Church who would  
12 be willing to assist him in overthrowing Church leadership. The Church  
13 obtained information about Armstrong's plans and, through a police-  
14 sanctioned investigation, provided Armstrong with the "defectors" he  
15 sought. On four separate occasions in November, 1984, Armstrong met with  
16 two individuals that he considered to be defectors, whom he knew as "Joey"  
17 and "Mike." In reality, both "Joey" and "Mike" were loyal Church members  
18 who, with permission from the Los Angeles police, agreed to have their  
19 conversations with Armstrong surreptitiously videotaped. During the course  
20 of these conversations, Armstrong:

21 a. Demanded that "Joey" provide him with copies of documents  
22 published by the Church so that he could forge documents in the  
23 same style. Armstrong wanted "Joey" to then plant these  
24 Armstrong creations in the Church's files so that Armstrong could  
25 tip off the Criminal Investigations Division of the Internal  
26 Revenue Service ("CID"), and the incriminating documents would be  
27 found in a resulting raid;

28 b. Sought to "set up" the defection of a senior Scientologist by  
finding a woman to seduce him;

c. Told "Joey" all about his conversations with Al Lipkin, an  
investigator for the CID, and attempted to get "Joey" to call  
Lipkin and give him false information that would implicate the  
Church's leaders in the misuse of donations; and

d. Instructed "Mike" on the methods of creating a lawsuit  
against the Church leadership based on nothing at all:

ARMSTRONG: They can allege it. They can allege it.  
They don't even have -- they can allege it.

RINDER: So they don't even have to have the document  
sitting in front of them and then --

ARMSTRONG: F\_\_ing say the organization destroys the  
documents.

\* \* \*

Where are the -- we don't have to prove a goddamn  
thing. We don't have to prove s\_\_t; we just have to  
allege it.

[Ex. 3, Farny Decl., ¶¶ 4 and 5.]

28

1 **B. Armstrong Has Violated the Settlement Agreement**

2 1. **Armstrong Violated The Agreement By Providing Aid To Anti-**  
3 **Church Litiqants Vicki And Richard Aznaran**

4 Vicki and Richard Aznaran ("the Aznarans"), are former Church members  
5 currently engaged in litigation against, inter alia, RTC and CSI. In June,  
6 1991, the Aznarans discharged their attorney, Ford Greene, and retained  
7 Joseph A. Yanny to represent them. [Exs. 1A, 1B, 1C, 1D to Request,  
8 Substitutions of Attorney.]<sup>9</sup>

9 While counsel for the Aznarans, Yanny hired Armstrong, in Yanny's own  
10 words "as a paralegal to help [Yanny] on the Aznaran case." [Ex. 1E to  
11 Request, Transcript of Proceedings in Religious Technology Center et al. v.  
12 Joseph A. Yanny, et al., LASC No. BC 033035 ("RTC v. Yanny"), p. 25.] In  
13 a holographic declaration supplied to Yanny, Armstrong admitted that Yanny  
14 called him on July 10, 1991, and asked for Armstrong's help in Yanny's  
15 representation of the Aznarans [Ex. 1F to Request, Declaration of Gerald  
16 Armstrong of July 19, 1991, ¶ 2]; that Armstrong agreed to help Yanny with  
17 the Aznarans' case; that he would travel to Los Angeles for that express  
18 purpose on July 12, 1991 [Id., ¶ 3]; and that Armstrong asked Yanny to pay  
19 him \$500 for his services. [Id., ¶ 3.] Armstrong admits that he did  
20 travel to Los Angeles, did stay with Yanny on July 15 and 16, and wrote a  
21 declaration for Yanny and the Aznarans. [Id., ¶ 4.] Yanny has also  
22 admitted that he hired Armstrong as a paralegal against the Church and  
23 other related entities. [Ex. 1G to Request, Declaration of Joseph A.  
24 Yanny, July 31, 1991, ¶ 4, and Ex. 1E to Request, supra.]

25 Armstrong's acceptance of employment from Yanny to work on the

26 <sup>9</sup> Yanny is former counsel to the Church parties and his substitution into  
27 the case was later vacated by the Court sua sponte, the Court noting that  
28 Yanny's retention as the Aznarans' counsel was "highly prejudicial" to CSI.

1 Aznarans' case patently violates Paragraphs 10 and 7(G) of the Agreement,  
2 which prohibits Armstrong from providing aid or advice to anyone engaged in  
3 or contemplating litigation adverse to the Church. [Ex. 2A, ¶¶ 7(G), 10.]  
4 The Aznarans are directly engaged in litigation with RTC and CSI, and  
5 Armstrong has provided direct assistance to them by acting as Yanny's  
6 paralegal. There could not be a clearer example of conduct which violates  
7 the letter and intent of the Agreement.

8       **2. Armstrong Also Violated the Agreement by**  
9       **Aiding Yanny in Litigation Against the Church**

10       After Yanny entered his appearance for the Aznarans and indicated to  
11 Church counsel that he represented Armstrong as well, the Church and two  
12 related entities sued Yanny in this Court. In that action, the Church  
13 sought and obtained a Temporary Restraining Order and a Preliminary  
14 Injunction against Yanny [Ex. 1H, Ex. 1I], enjoining Yanny from aiding,  
15 advising, or representing, directly or indirectly, the Aznarans or  
16 Armstrong, on any matters relating to the Church. In those proceedings,  
17 Yanny filed two declarations prepared and executed by Armstrong [Exs. 1J  
18 and 1K to Request] in which Armstrong asserts knowledge of settlements,  
19 including his own, which he purportedly gleaned by working as a paralegal  
20 for yet another law firm. [Ex. 1J to Request, ¶¶ 2-5]. The declarations  
21 were offered by Yanny as part of Yanny's defense, which was ultimately  
22 rejected by the Court when it issued its injunction. [Ex. 1E to Request,  
23 at 31-34.] Just as in the Aznarans' case, this aid provided by Armstrong  
24 to Yanny, a litigant against the Church, was a direct violation of  
25 paragraphs 10 and 7(G) of the Agreement. Moreover, Armstrong attached as  
26 an exhibit to one of the declarations, Ex. K, a copy of the Agreement, the  
27 terms of which he had agreed to keep confidential. [Ex. 2A to Wilson  
28 Decl., ¶ 18(d).] This disclosure of the terms of the Agreement is a direct

1 violation of the Agreement.

2 3. Armstrong Violated the Agreement by  
3 Helping Ford Greene with the Aznaran Case

4 Armstrong is brazenly, openly and continually assisting adverse  
5 litigants and bragging about it to the Church's counsel and staff. After  
6 Yanny's substitution into the Aznarans' case was summarily vacated, Ford  
7 Greene was reinstated as the Aznarans' counsel of record. In a letter to  
8 the Church's counsel dated August 21, 1991, Armstrong admitted that he had  
9 been working at Greene's office with Greene on the Aznarans' case, helping  
10 him to prepare responses to summary judgment motions filed in that case.  
11 [Ex. 2B to Wilson Decl., p. 2.] Both Armstrong and Greene have freely  
12 admitted in sworn declarations that Greene has and is continuing to employ  
13 Armstrong as a paralegal in the Aznaran case. Armstrong himself describes  
14 these activities as follows:

15 My help to Ford Greene in all of the papers recently filed  
16 has been in proofreading, copying, collating, hole-punching,  
17 stapling, stamping, packaging, labeling, air freighting, and  
18 mailing. Mr. Greene and I have had several conversations during  
19 this period, some of which certainly concerned the litigation.

20 [Ex. 1L to Request, Declaration of Gerald Armstrong (minus exhibits) at ¶

21 18. See also, Ex. 1M to Request, Declaration of Ford Greene, ¶ 7.]

22 Indeed, Armstrong's presence in Greene's offices has been continuous  
23 throughout December, 1991, and shows no sign of cessation. [Ex. 5,  
24 Declaration of Laurie J. Bartilson.]<sup>10</sup>

25 On October 3, 1991, the Church filed a motion in Los Angeles Superior

---

26 <sup>10</sup> In addition to the paralegal services Armstrong claims he provided the  
27 Aznarans, Armstrong also provided the Aznarans with a declaration, dated  
28 August 26, 1991, and filed in that case. [Ex. 1N to Request.] Armstrong's  
declaration describes some of his experiences with and concerning the  
Church, in direct violation of paragraphs 7(H), 7(G) and 10 of the  
Agreement, and purports to authenticate copies of documents whose contents  
he agreed, in paragraph 10 of the Agreement, never to reveal. [Id.,  
Exhibits 1 and 2.]

1 On October 3, 1991, the Church filed a motion in Los Angeles Superior  
2 Court for enforcement of the Settlement Agreement and for liquidated  
3 damages due to Armstrong's breaches of the Agreement. In Armstrong's  
4 papers and at the hearing of the matter, Armstrong did not deny that he has  
5 committed the multiple breaches which provoked the filing of the motion,  
6 and he did not deny that his activities violated the specific provisions of  
7 the Settlement Agreement cited in the moving papers.<sup>11</sup> Instead, Armstrong  
8 raised the tired refrain that he had been under "duress" when he executed  
9 the Agreement. Armstrong repeatedly raised this pretense and his alleged  
10 "fear" of the Church before Judge Breckenridge, the trial judge in the  
11 earlier, settled matter. It is, however, thoroughly belied by the approval  
12 of the Agreement by Armstrong's attorney, and by Armstrong's conduct at the  
13 time he signed the Agreement.<sup>12</sup> If anything, Armstrong has become bolder

14 \_\_\_\_\_  
15 reveal. [Id., Exhibits 1 and 2.]

16 <sup>11</sup> Indeed, Armstrong's response to the motion was in part to boast that  
17 not only had he committed the violations in question, he had never  
18 intended to abide by the Agreement at all. In a declaration dated  
19 November 17, 1991, Armstrong asserts that he read all of the clauses at  
20 issue here and understood their import at the time he signed the  
21 Agreement, but objected to them to his own lawyers and told his lawyers  
22 he never intended to follow them. [Ex. 1P, Declaration of Gerald  
23 Armstrong, ¶¶ 12-14.] Armstrong asserts that he "put on a happy face"  
24 and went through the charade of signing the Agreement anyway, so that he  
25 could have from the settlement the "financial wherewithal" to "get on  
26 with next phase of [his] life." [Id., ¶ 17.] Naturally, Armstrong never  
27 expressed to the Church or its lawyers that he had no intention of  
28 honoring his Agreement when he signed the papers. If he had, the Church  
would never have agreed to pay him anything.

23 <sup>12</sup> Moreover, the credibility of this refrain is shattered by Armstrong's  
24 own words, uttered months after obtaining a defense judgment in the  
25 original Armstrong action based on his spurious claim of being under  
26 "duress" due to his "fear" of the Church. In the November, 1984  
videotaped conversations with Joey referred to above, the following  
exchange took place while Armstrong was discussing his plans for  
destroying the Church:

27 JOEY: Well, you're not hiding!

28 ARMSTRONG: Huh?

JOEY: You're not hiding.

ARMSTRONG: F--- no! And. . .

1 become bolder as time has passed.

2 The Church's showing in support of the motion to enforce the  
3 Settlement Agreement consisted of uncontroverted evidence that Armstrong  
4 had violated paragraphs 10 and 7(G) of the Settlement Agreement by:

5 1) Providing aid to the Aznarans in their lawsuit against the  
6 plaintiff via employment by Yanny as a paralegal;

7 2) Aiding Yanny in litigation against the Church by voluntarily  
8 filing declarations on Yanny's behalf; and

9 3) Helping Ford Greene as a paralegal on the Aznaran case, and by  
10 voluntarily providing declarations for filing by Greene in that case.

11 Not one word of Armstrong's opposition was devoted to challenging  
12 those proven accusations. However, the Court, the Honorable Bruce R.  
13 Geernaert presiding, did not address the merits, holding instead that there  
14 was no jurisdiction to decide the motion.

15 While the Church has no interest in pursuing a multiplicity of suits,  
16 Armstrong's own conduct demonstrates not an isolated incident, but an  
17 ongoing campaign, no different from his earlier campaign of hatred and  
18 harassment. With a new action now before the Court, an injunction should  
19 and must issue to preserve the Church's rights pending trial.

### 20 III. ARGUMENT

#### 21 A. An Injunction May Be Granted To Prevent The Breach Of A Contract The 22 Performance Of Which Would Be Specifically Enforced

23 C.C.P. § 526 empowers the court to grant an injunction to prevent a  
24 breach of a contract if the contract is one which may be specifically  
25 enforced. C.C.P. § 526; see also, Steinmeyer v. Warner Consolidated Corp.  
26 (1974) 42 Cal.App.3d 515, 518, 116 Cal.Rptr. 57, 60 ("An injunction cannot  
27 be granted to prevent breach of a contract which is not specifically  
28 enforceable."); Southern Christian Leadership Conference of Greater Los



1 Angeles v. Al Malaikah Auditorium Co. (1991) 230 Cal.App.3d 207, 281  
2 Cal.Rptr. 216. The Agreement at issue is one which may be specifically  
3 enforced by this Court as the contract is sufficiently definite and certain  
4 in its terms, it is just and reasonable, the plaintiff has performed its  
5 side of the bargain, Armstrong has breached the contract, the Agreement was  
6 supported by adequate consideration, and the Church's remedy at law is  
7 inadequate. Taramind Lithography Workshop, Inc. v. Sanders (1983) 143  
8 Cal.App.3d. 571, 575, 193 Cal.Rptr. 409, 410.

9 Further, while the Agreement contains a liquidated damages provision,  
10 it is a well-settled statutory principle that a contract providing for  
11 liquidated damages does not prevent the contract from being specifically  
12 enforceable. Civil Code § 3389. Accordingly, the Court is empowered to  
13 grant a preliminary injunction to enjoin Armstrong from further breach.

14 **B. Preservation of the Status Quo and Prevention of Irreparable Injury**  
15 **Requires the Court to Grant Plaintiff's Application**

16 While C.C.P. § 526(5) deters the granting of injunctions to prevent  
17 the breach of a contract "the performance of which would not be  
18 specifically enforced," this Agreement is patently specifically  
19 enforceable. Indeed, Scientology's former Mother Church, the Church of  
20 Scientology of California ("CSC"), has already obtained injunctions and  
21 specific performance of similar settlement agreements.

22 In Wakefield v. Church of Scientology of California (11th Cir. 1991)  
23 \_\_\_ F.2d \_\_\_ (Slip Op., Exhibit 1R to Request), CSC obtained specific  
24 performance of an agreement substantially similar to this Agreement. CSC  
25 moved to enforce the provisions of the settlement agreement, and the  
26 district court ordered hearings before the magistrate judge, who concluded  
27 that Wakefield had violated the agreement. The district court adopted the  
28 magistrate judge's findings, and issued a preliminary and permanent

1 injunction prohibiting Wakefield from violating the agreement. Id. When  
2 Wakefield violated the injunction, again making media appearances, CSC  
3 sought an order to show cause why Wakefield should not be held in contempt.  
4 At an in camera proceeding, the magistrate judge found that Wakefield had  
5 willfully violated the injunction, and recommended that the case be  
6 referred to the United States Attorney's office for criminal contempt  
7 proceedings. Id. at 4628.

8       Although the district court's issuance of the injunction in Wakefield  
9 was not at issue in the Eleventh Circuit proceedings, the Eleventh Circuit  
10 described in its opinion, "Wakefield's constant disregard and misuse of the  
11 judicial process," suggesting approval of the district court's actions.  
12 Id. at 4630.

13       Similarly, in McLean v. Church of Scientology of California (11th Cir.  
14 1991) \_\_ F.2d \_\_ No. 89-3505 [separately Filed with this Court on April 28,  
15 1992, Notice of Filing], plaintiff McLean also entered into a settlement  
16 agreement containing confidentiality provisions preventing her from  
17 discussing the litigation with anyone outside her immediate family. Id. at  
18 2. By her own testimony, McLean admitted to reacquiring certain documents  
19 and using them to "counsel" Church members. She further admitted to  
20 discussing certain aspects of the suit with people outside her immediate  
21 family. Id. at 3. As a result, the appellate court affirmed the district  
22 court order permanently enjoining McLean from disclosing any information  
23 about her lawsuit and the resulting settlement agreement. Id. at 6.

24       Just as the district courts in Wakefield and McLean found it necessary  
25 to issue an injunction to enforce the agreement of the parties, so must  
26 this Court issue a preliminary injunction to enjoin Armstrong from further  
27 breaches. The status quo will be maintained and irreparable injury will be  
28 prevented only by entering such an order.

1           **1.    The Status Quo Will Be Maintained**  
2           **Only By Granting Plaintiff's Motion**

3           The status quo sought to be maintained by the Church is the  
4 achievement by both sides of the benefits of the Agreement -- the status  
5 quo which existed when, in December 1986, the Church and Armstrong were  
6 fully performing their obligations under the Agreement. By repeatedly  
7 violating the Agreement, Armstrong has destroyed the peace for which the  
8 Church lawfully bargained. Absent the order the Church seeks, the damage  
9 and corruption caused by Armstrong's outright and continuing breaches of  
10 the Agreement will spread even further than it already has.

11           The fact that Armstrong intends to continue his transgressions and  
12 damage the Church could not be any plainer. Indeed, Armstrong has already  
13 made it overwhelmingly clear that he has deliberately breached the  
14 Agreement by his own actions in aiding Yanny and Ford Greene in litigation  
15 adverse to the Church and in his own statements made in his declarations  
16 filed in the Aznaran case. Therefore, the Church requests that the Court  
17 compel Armstrong to cease assisting parties with interests adverse to the  
18 Church and to abide by the terms of the Agreement.

19           **2.    The Church Will Be Irreparably Harmed**  
20           **Absent the Issuance of an Injunction**

21           Not only is Armstrong assisting adversaries of the Church, he is doing  
22 so to foster and perpetuate relentless litigation against the Church to  
23 serve his own ends. Armstrong's conduct is continuous, oppressive and  
24 malicious and has been undertaken for the express purpose of injuring  
25 plaintiff. Only an injunction pending trial has any hope of stopping  
26 Armstrong from waging his malicious, relentless and senseless war.

27           C.C.P. § 526 provides that an injunction can be granted when it  
28 appears by complaint or affidavit that the commission of some act during  
the continuance of the action would produce great or irreparable injury to

1 a party to the action (subdivision 2) or when it appears that a party to  
2 the action is doing, or threatening to do, some act in violation of the  
3 rights of another respecting the subject of the action and tending to  
4 render the judgment ineffectual (subdivision 3). Here, an injunction is  
5 needed to prevent Armstrong from continuously breaching the Agreement and  
6 fomenting litigation against the Church while the Church awaits trial and  
7 judgment on the merits. Although some of Armstrong's breaches are subject  
8 to a liquidated damages clause, others, including the continual violations  
9 which he is engaging in through his employment by Ford Greene, are not. It  
10 is these continual violations, which no monetary award can remedy, which  
11 the Church seeks to enjoin.<sup>13</sup>

12 C. A Balancing of the Equities Requires  
13 The Court to Grant Plaintiff's Motion

14 In determining whether to grant injunctive relief, the Court must  
15 balance the equities before it and exercise its discretion in favor of the  
16 party most likely to be injured. Robbins v. Superior Court (1985) 38  
17 Cal.3d 199, 205, 211 Cal.Rptr. 398, 402. In balancing the equities, the  
18 Court considers two interrelated factors: (1) the likelihood that plaintiff  
19 will prevail on the merits; and (2) the interim harm that plaintiff is  
20

21 <sup>13</sup> No remedy may be available to the Churches in the form of liquidated  
22 damages in any case. Armstrong has asserted by declaration that he is  
insolvent, saying,

23 "I have attempted to obtain an attorney to represent me specifically  
24 in the motion to enforce now before the court, but have so far been  
25 unsuccessful. I do not have the wherewithal to retain any attorney  
who would require a fee to defend me." [Ex. 1Q to Request.]

26 Armstrong's asserted insolvency made the guarantee of liquidated damages an  
27 empty promise, and renders the Churches' damage, even for these breaches,  
irremediable. West Coast Construction Company v. Oceano Sanitary District  
(1971) 17 Cal.App.3d 693, 95 Cal.Rptr. 169.

28

1 likely to suffer if the injunction is denied as compared to the harm that  
2 defendants are likely to suffer if the injunction is granted. Id. at 206.

3       1.     Plaintiff Is Likely To Prevail On The Merits

4       It is clear that the Church is likely to succeed on the merits. The  
5 Church has submitted an overwhelming factual showing, which provides  
6 thorough detail of Armstrong's willful injurious conduct and overt  
7 violations of the Agreement. The Verified Complaint and the Declarations  
8 of Lawrence E. Heller, Exhibit 4, and Laurie J. Bartilson, Exhibit 5,  
9 supply only a portion of the facts for the Church's likelihood of success  
10 on the merits. In addition, Armstrong's own statements, made in  
11 declarations filed in the Aznaran case, as well as his own conduct, form  
12 the best evidence that he has breached and will continue to breach the  
13 Agreement, until this Court enjoins his violative conduct.

14       2.     The Interim Harm That Plaintiff Will Suffer  
15             Absent An Injunction Exceeds Any Harm to  
              Armstrong If Injunctive Relief Is Granted

16       Armstrong has no equities whatsoever in this action. No one has any  
17 right to continue to violate a settlement agreement. Armstrong's only  
18 "injury" if he is enjoined is that he will not be able to violate the  
19 Agreement in the future. On the other hand, the harm that will be suffered  
20 by the Church absent injunctive relief is the irreparable harm of being  
21 victimized by Armstrong's violations, while others with interests adverse  
22 to the Church benefit in legal proceedings from an unfettered flow of  
23 breached obligations, wrongful disclosures and legal infidelity. Thus, the  
24 balancing of the equities unquestionably favors the Church.

25                             IV. CONCLUSION

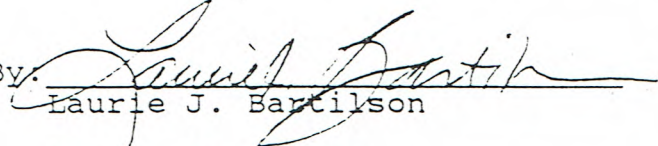
26       In December, 1986, the Church bought an expensive peace from  
27 Armstrong. Its members thought, and reasonably, that the negotiated peace  
28 was desired by both sides, and permanent, its terms both clear and fair.

1 Armstrong, his funds allegedly gone, has embarked on a campaign of  
2 deliberate breaches reminiscent of the very conduct plaintiff sought to  
3 end, in an obvious effort to convince the Church that it must pay for its  
4 peace in five-year installments. Such an agreement was neither  
5 contemplated nor made. By providing aid, declarations and information  
6 which he agreed to keep confidential directly to the Church litigation  
7 adversaries, Armstrong has repeatedly, deliberately and continuously  
8 breached the Agreement which he signed and for which he accepted a  
9 substantial settlement amount. Because Armstrong refuses to stop his  
10 continuous contempt for his own agreements, this Court must, on the  
11 uncontroverted evidence, much of it from Armstrong's own lips, enjoin him  
12 from further breaching his Agreement while this action is pending.

13 Dated: May 7, 1992

Respectfully submitted,

14 BOWLES & MOXON

15  
16 By:   
17 Laurie J. Bartilson

18 Andrew H. Wilson  
19 WILSON, RYAN & CAMPILONGO

20 Attorneys for Plaintiff  
21 CHURCH OF SCIENTOLOGY  
22 INTERNATIONAL  
23  
24  
25  
26

27 H:\ARMSTRONPRELIM7  
28

PROOF OF SERVICE

STATE OF CALIFORNIA            )  
                                  )    ss.  
COUNTY OF LOS ANGELES        )

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Blvd., Suite 2000, Los Angeles, CA 90028

On May 7, 1992, I served the foregoing document described as AMENDED MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION FOR BREACH OF CONTRACT on defendants in this action as follows:

- by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;
- by placing  the original  a true copy thereof in a sealed envelope addressed as follows:

Paul Morantz   BY HAND & TELEFAX  
P.O. Box 11  
Pacific Palisades, CA 90272

Graham Berry   BY HAND & TELEFAX  
Lewis, D'Amato, Brisbois & Bisgaard  
221 N. Figueroa St. Suite 1200  
Los Angeles, CA 90012

BY MAIL

\*I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more

than one day after date of deposit for mailing an affidavit.

Executed on \_\_\_\_\_ at Los Angeles, California.

\*\* (BY PERSONAL SERVICE) I delivered such envelopes by hand to the offices of the addressee.

Executed on May 7, 1992, at Los Angeles, California.

(State) I declare under penalty of the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Laura B. ...      Signature

\* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

\*\* (For personal service signature must be that of messenger)



PROOF OF SERVICE

STATE OF CALIFORNIA            )  
  )  ss.  
COUNTY OF LOS ANGELES        )

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Blvd., Suite 2000, Los Angeles, CA 90028

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by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

by placing  the original  a true copy thereof in a sealed envelope addressed as follows:

Ford Greene  BY MAIL & TELEFAX  
Hub Law Offices  
711 Sir Francis Drake Blvd  
San Anselmo, CA 94960-1949

BY MAIL

\*I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on May 7, 1992 at Los Angeles, California.

**\*\* (BY PERSONAL SERVICE)** I delivered such envelopes by hand to the offices of the addressee.

Executed on \_\_\_\_\_, at Los Angeles, California.

(State) I declare under penalty of the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Carrie Smith Lawrence L. L. L.  
Signature

\* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

\*\* (For personal service signature must be that of messenger)

JUL 16 1992

Superior Court of California  
County of Los Angeles  
Los Angeles, California

HUB LAW OFFICES

COPY

CHURCH OF SCIENTOLOGY,  
INTERNATIONAL, etc.

Plaintiff,

vs.

GERALD ARMSTRONG, ET AL.,

Defendant.

.....

.  
. Docket No. BC 052-395  
.   
.   
.   
.   
.   
. Los Angeles, California  
. May 27, 1992  
. 8:30 a.m.

MOTION FOR PRELIMINARY INJUNCTION

THE HONORABLE RONALD M. SOHIGIAN, PRESIDING

COURT RECORDER:

J.W. CRUSE

TRANSCRIPTION BY:

PARRIS TRANSCRIPTS  
P.O. Box 41754  
Los Angeles, CA 90041-9998  
(213) 254-4157

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

## APPEARANCES:

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PAUL MORANTZ  
Attorney at Law  
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Pacific Palisades, California 90272  
(213) 459-4745

1 PROCEEDINGS BEGIN AT 8:30 A.M.

2 (Court is Called to Order)

3 THE COURT: All right, we're back on the record in  
4 Scientology against Armstrong, BC-052395. The attorneys who  
5 were before the Court before the recess at the conclusion of  
6 yesterday's proceedings are before the Court again, each at  
7 counsel table. And of course that includes Mr. Berry who  
8 didn't sign in yesterday but who was here during most of the  
9 proceedings and is here now.

10 What I intend to have you do now is to make your  
11 arguments based on the evidence in the record. I intend to  
12 have the plaintiff open and close. And I intend to have the  
13 defendant argue by way of opposition. Any objection to that  
14 procedure?

15 MR. WILSON: No, Your Honor.

16 THE COURT: How about you, counsel. Any objection?

17 MR. GREENE: No. No, Your Honor.

18 THE COURT: Okay.

19 MR. WILSON: I have one question.

20 THE COURT: Sure.

21 MR. WILSON: Should I reserve part of the ten  
22 minutes you've allotted me for the close?

23 THE COURT: Yes. What I'm going to do is this. I'm  
24 going to deviate from two orders that I made yesterday, or  
25 management points that I made yesterday. The first is this.

26 I think that it will not be necessary for me to have  
27 you back again on the order to show cause, the thing that you  
28 were having problems on. Going through the evidence last

1 night gives me the feeling that it would probably not be  
2 fruitful to conduct such a proceeding. And this morning.  
3 That's number one.

4 Number two; I'm going to give you more than the --  
5 pardon me -- more than the period of -- would you pardon me  
6 for a second. Let me see if I can take an allergy pill.  
7 Pardon me. I'll do that in just a second. I'm going to give  
8 you more than the time that I had indicated so that to the  
9 extent that that additional time is of assistance to you you  
10 can utilize it.

11 I had had -- my exclusive concern is my commitment  
12 to other cases and to the interests of other litigants, all of  
13 which I have to watch out for. There has been sort of a  
14 double switch in my scheduling. I'm not going to be with you  
15 this afternoon, as you know. And one of the other matters  
16 that was of pressing significance will be one that I won't  
17 have to devote as much time to as I had thought.

18 If you'll wait for just a second, I'll be right  
19 back.

20 (Pause)

21 THE COURT: Is someone wearing cologne or perfume of  
22 any kind?

23 MR. WILSON: Not me.

24 THE COURT: Down here at this end of the table?

25 MR. GREENE: Yes. Some aftershave.

26 THE COURT: What's the brand.

27 MR. GREENE: Chanel.

28 THE COURT: Okay.

1 MR. GREENE: Not accustomed to such an intimate  
2 question.

3 (Laughing)

4 THE COURT: Well, I don't miss a thing.

5 MR. GREENE: I recognize that.

6 THE COURT: It's very -- you know, you can wear  
7 whatever you want. It's just that that creates an allergy  
8 problem with me. How much time do you suggest for argument,  
9 counsel?

10 MR. WILSON: Your Honor, I think if I had ten, at  
11 the most fifteen minutes for an opening, and maybe five or ten  
12 for close, that would be more than adequate.

13 THE COURT: How about you, counsel?

14 MR. GREENE: A total commensurate amount of time.

15 THE COURT: Fifteen minutes total?

16 MR. GREENE: No, twenty-five minutes total.

17 THE COURT: All right, you want to change your  
18 position then?

19 MR. WILSON: I seriously doubt I'll be more than  
20 twenty minutes but if --

21 THE COURT: Okay, here's what we'll do.

22 MR. WILSON: -- Mr. Greene needs --

23 THE COURT: I'll give each of you twenty-five  
24 minutes. You can divide the time up any way you want. We'll  
25 visualize that you have begun at seventeen minutes to 9:00.  
26 Go right ahead.

27 MR. WILSON: Okay. One preliminary matter and I  
28 don't mind if it counts against the time.

1           When I started yesterday I did say that I might want  
2 to offer some rebuttal evidence. I have two declarations. I  
3 will only want to offer portions of those declarations. I've  
4 previously asked Mr. Greene if had an objection and he said he  
5 did. May I present, proffer those -- that evidence?

6           THE COURT: You said that -- yes, you can proffer  
7 them. I'm -- go ahead.

8           MR. WILSON: The first is, they're both in a volume  
9 entitled Exhibits in Support of Plaintiff's Reply to  
10 Defendant's Opposition to Motion for Preliminary Injunction  
11 and Reply to Amicus Brief of Joseph Yanny.

12           First is the declaration of Ms. Laurie Bartilson.  
13 And I would proffer the introductory paragraph which states  
14 who she is and the foundation.

15           And the second -- well, the second paragraph is  
16 necessary; it merely attaches a foreign authority that we're  
17 relying on.

18           The third paragraph attaches a transcript of  
19 proceedings in this case before Judge Geernaert dated April  
20 28, 1982 -- 1992, excuse me, as Exhibit B.

21           And the sixth paragraph, which is on page 2, lines 7  
22 to 18, which basically lists that person with -- who are  
23 subject to similar restrictions imposed upon Armstrong by the  
24 agreement have testified pursuant to subpoena. That's --  
25 that's from the Bartilson declaration.

26           THE COURT: Yes.

27           MR. WILSON: Then --

28           THE COURT: Just a second. Counsel?



1 MR. GREENE: Your Honor, I object to that on the  
2 following bases.

3 One, and most importantly, yesterday was the time  
4 for the evidentiary phase of this proceeding. If there was  
5 any rebuttal evidence to be submitted by the plaintiff  
6 yesterday was the time to do that so the Court could rule on  
7 it. And then depending on whatever the Court's ruling would  
8 be, the parties could rely on that ruling for the preparation  
9 of their arguments. That of course is what I've done. I  
10 didn't even conceive that there would be something like this,  
11 so rather than bring the dolly-load worth of documents here  
12 again today, I brought a single briefcase. I --

13 THE COURT: You mean, you'd have to do something to  
14 respond to the content of the proceedings of the 28th of April  
15 before Judge Geernaert?

16 MR. GREENE: Yes.

17 THE COURT: Why?

18 MR. GREENE: What would I -- I'd have to look and  
19 review those proceedings and incorporate into my argument  
20 whatever points would logically flow from those proceedings.  
21 And it's simply not fair, now at the eleventh-and-half hour  
22 for counsel to say, oh Your Honor I forgot, and by the way  
23 we'd like to proffer this rebuttal evidence, after the  
24 exhaustive proceeding that we went through yesterday and after  
25 the Court graciously gave us the time last night and this  
26 morning to review and to prepare. And it's simply not fair.

27 And the -- counsel has had this material. And if  
28 counsel wanted to submit it in rebuttal a submission should

1 have been made during the evidentiary phase. And it's -- now  
2 is not the time to reopen evidence, literally minutes before  
3 argument is to commence and when counsel has had an  
4 opportunity --

5 THE COURT: The only reason argument commenced today  
6 was I didn't hold argument yesterday. But generally we hold  
7 argument right after the taking of evidence, wouldn't we?

8 MR. GREENE: Well, then my position would still of  
9 course be the same. If --

10 THE COURT: Okay.

11 MR. GREENE: -- if that's what happened yesterday --

12 THE COURT: Any other --

13 MR. GREENE: -- then we wouldn't be --

14 THE COURT: Any other objection?

15 MR. GREENE: Excuse me, Your Honor?

16 THE COURT: Any other objection to that material?

17 MR. GREENE: As to paragraph no. 6, now I am -- I am  
18 going on -- I don't -- on what counsel represented to the  
19 Court. I don't have the document in front of me because --

20 THE COURT: Give him a copy of the document now.

21 MR. GREENE: If I may have a moment, Your Honor.

22 THE COURT: I don't blame you.

23 (Pause)

24 THE COURT: Where is this declaration of Bartilson?  
25 When was it dated and when was it signed?

26 MR. GREENE: It was dated -- it was signed May 17th  
27 and file stamped May 20th.

28 MR. WILSON: By the way, Mr. Greene has had this

1 declaration.

2 MR. GREENE: Oh, yeah.

3 THE COURT: He may have. The question is why it  
4 wasn't introduced yesterday? What makes it rebuttal?

5 MR. WILSON: The reason it's rebuttal, Your Honor,  
6 is because Mr. Greene introduced evidence yesterday about  
7 suppression of evidence. And I would've introduced it  
8 yesterday but when you closed the proceedings you said  
9 evidence is closed, we're going to have argument, and you left  
10 the bench. And I didn't have time to look at my notes and see  
11 it. And I apologize for that.

12 THE COURT: I don't think that's a candid  
13 description of your conduct or of the realities of the hearing  
14 at all. And the record should reflect that. That's just not  
15 an accurate statement of the way this case has been handled.  
16 You people have had virtually infinite time within which to  
17 prepare and present your case. The force, if there is any, to  
18 Mr. Greene's concern is that there is -- there has been plenty  
19 of time for everybody to do everything that you've needed to  
20 do.

21 (Pause)

22 MR. GREENE: Your Honor, the transcript is -- a  
23 number of pages -- I don't know whether I should take -- I've  
24 got to read it if we're going to have to address it.

25 MR. WILSON: Only the portion quoted in our reply  
26 brief.

27 MR. GREENE: Well, we -- that's -- Your Honor, there  
28 are matters that were --

1 THE COURT: Did you discuss this yesterday when you  
2 left here?

3 MR. GREENE: No.

4 MR. WILSON: No.

5 THE COURT: What is the matter with you, gentlemen?  
6 What's the problem? Is this kind of amateur night or  
7 something, at the old courthouse? Does it occur to you that  
8 when you spend an entire day going through evidentiary  
9 objections, if you have something else that you want to put it  
10 it might be worthwhile to discuss it with one another? Mr.  
11 Wilson?

12 MR. WILSON: I apologize for that, Your Honor.

13 THE COURT: Do you apologize or was that part of a  
14 program on your part to use whatever weight and muscle you  
15 could use to take advantage of the defendant?

16 MR. WILSON: It was not part of any program, Your  
17 Honor. It was not part of any program. We haven't done  
18 anything to do that.

19 THE COURT: I don't believe you. I think that there  
20 was no legitimate reason for your not having discussed this  
21 matter with Mr. Greene last night. We recessed before 4:00  
22 o'clock, a few moments before 4:00 to be sure, but it was  
23 before 4:00 o'clock. There was absolutely no reason for this  
24 matter not to have been taken up fully by the lawyers so that  
25 I would not be met with this complaint by Mr. Greene that he's  
26 going to have to sit there and read a transcript.

27 I just think that's an absolute affront. And I  
28 think that the conduct of this litigation has similarly been

1 an effort on the part of the parties to abuse each other,  
2 heedless of the point that what they were doing also was  
3 abusing the public by, in effect, requiring some judicial  
4 officer to go through an effort to try to unravel the mess  
5 that they have created.

6 MR. WILSON: Your Honor, the evidence that we  
7 submitted was very directed to the issues. We did not submit  
8 masses of evidence to this Court.

9 THE COURT: That doesn't make any difference. You  
10 sat here all day long, two lawyers, both with pencils in your  
11 hand, and you didn't think to -- and this is Bartilson's  
12 declaration. Who is Bartilson? The lawyer sitting to your  
13 left. The suggestion that it came to you only after you had a  
14 chance to review your notes that you were going to use the  
15 declaration of your own colleague, one of the attorneys of  
16 record for your client as further evidence in this case,  
17 really strains anybody's capacity for flexible belief. And it  
18 certainly strains mine. I just don't believe it. And I my  
19 observation of the apparent ability of counsel, not their care  
20 and concern for preserving the appropriate level of just  
21 proceedings but their raw ability, reinforces my lack of  
22 belief.

23 MR. WILSON: Your Honor, I've listened to your  
24 comments. I withdraw the proffer of evidence, and I will rely  
25 on what's been submitted yesterday.

26 THE COURT: Go ahead with your argument.

27 MR. WILSON: Thank you, Your Honor.

28 This case is really very simple. It involves a

1 contract which is very specific, breaches which are admitted  
2 and defenses which cannot be maintained. The agreement itself  
3 is in front of you. It is Exhibit A to Exhibit II of the  
4 evidence in support of the preliminary injunction. I would  
5 like to point to --

6 THE COURT: What specifically did it require  
7 Armstrong to do?

8 MR. WILSON: The paragraphs upon which we rely are  
9 paragraphs 7-D, and accurately stated, it's what it required  
10 Armstrong to refrain from doing. Because that's the issue  
11 here. It's not a mandatory injunction that we're seeking but  
12 a prohibitory injunction. Paragraph 7-D required Armstrong  
13 not to publish books, magazine articles, et cetera, writings  
14 having to do with his experience with the Church or Mr.  
15 Hubbard, to maintain confidentiality.

16 THE COURT: Is there any evidence that shows that  
17 he's violating any covenant not to publish books, magazine  
18 articles or writings having to do with his experiences?

19 MR. WILSON: Not regarding books, magazine articles  
20 or publications. But the language is a little bit more all-  
21 inclusive than that. It's a very long paragraph and it  
22 basically, in my reading of it, relates to any publications.  
23 And the declarations which Mr. Armstrong has filed are  
24 publications in our view. That's paragraph 7-D.

25 Paragraph 7-E --

26 THE COURT: Just a second. What then should he have  
27 done or not have done?

28 MR. WILSON: Well, what he should not have done is

1 filed the declarations that he filed.

2 THE COURT: In what case?

3 MR. WILSON: I've got the list of declarations that  
4 were filed as the breeches, and I was going to come to that  
5 later. If you'd like me to deal with it now I will.

6 (Pause)

7 MR. WILSON: I think it would be helpful if I gave  
8 you the, all the paragraphs we relying on, because the  
9 breeches are breeches of more than one paragraph of the  
10 agreement. For example --

11 THE COURT: Suit yourself.

12 MR. WILSON: -- paragraph 7-E requires Mr. Armstrong  
13 to return certain materials and documents. The two paragraphs  
14 that are most important here are paragraph 7-G and paragraph  
15 7-H. Paragraph 7-G requires Mr. Armstrong not to voluntarily  
16 cooperate in any proceeding with a person adverse to any of  
17 the organizations listed as Scientology organizations in the  
18 agreement, and that includes the plaintiff.

19 And paragraph 7-H contains the provision prohibiting  
20 testimony unless it's pursuant to lawful process. And it also  
21 contains, excuse me, a confidentiality provision with respect  
22 to the terms of the settlement agreement.

23 THE COURT: Okay, let's look at it and see then just  
24 exactly what the language is, and just exactly the respects in  
25 which you contend it obligates Armstrong to do or refrain from  
26 doing anything.

27 MR. WILSON: Which you will find --

28 THE COURT: Which of the paragraphs do you want me

1 to start with?

2 MR. WILSON: Well, we might as well start with  
3 paragraph 7-D which is on page 6-7.

4 THE COURT: All right.

5 MR. WILSON: But the two most important ones are G  
6 and H, and those are on 10 and 11.

7 THE COURT: Where do you want me to start? I'll  
8 start wherever you'd like.

9 MR. WILSON: Well, we should start with pages 6 and  
10 7, because that's the first one.

11 THE COURT: That's where I am.

12 MR. WILSON: If you look on the bottom of page 6,  
13 paragraph D, it starts with the language, "Plaintiff agrees  
14 never to publish or attempt to publish," and then it lists  
15 books, magazine articles, books or other, so-and-so. And goes  
16 on. And then the second sentence --

17 THE COURT: You contend that he's violating anything  
18 there?

19 MR. WILSON: Not in the first --

20 THE COURT: You contend that he's helping anybody to  
21 create a film or videotape or audiotape or program or movie?

22 MR. WILSON: Not in the first sentence. The second  
23 sentence says, "Plaintiff further agrees he will maintain  
24 strict confidentiality and silence." This is on page 7, about  
25 ten lines down, "...with respect to experiences with the  
26 Church." And then it goes on, "...knowledge he may have about  
27 the Church, Mr. Hubbard," and so on. That is violated by the  
28 declarations that he's filed.



1 THE COURT: Tell me language that you're talking  
2 about?

3 MR. WILSON:

4 READING:

5 "Plaintiff further agrees that he will maintain  
6 strict confidentiality and silence with respect to  
7 his experiences with the Church of Scientology and  
8 any knowledge or information he may have concerning  
9 the Church of Scientology, L. Ron Hubbard, or any of  
10 the organizations, individuals and entities listed  
11 in paragraph 1 above."

12 THE COURT: What exactly is he supposed to do or  
13 refrain from doing then?

14 MR. WILSON: He's supposed to maintain  
15 confidentiality with respect to his experiences with the  
16 Church and the knowledge he has of Mr. Hubbard. He's not  
17 supposed to talk about that.

18 THE COURT: Why --

19 MR. WILSON: Or --

20 THE COURT: Why would it not have been appropriate  
21 to have just that single sentence and nothing else?

22 MR. WILSON: You mean and none of the other  
23 paragraphs?

24 THE COURT: Yes.

25 MR. WILSON: I will tell you that, Your Honor, and  
26 that was going to be part of my argument. I'll be happy to  
27 get to it now.

28 THE COURT: All right.

1 MR. WILSON: The declarations that are in evidence  
2 here, some of them, are Mr. Armstrong's declarations in the  
3 Van Shaick case in 1982 and his declaration in the Burden case  
4 in 1982. Those are Defendant's Evidence Volume I, 31692,  
5 Exhibits 1D(1) and 1D(2).

6 What Mr. Armstrong was engaged in from '82 through  
7 '86 was essentially aiding litigation against the Church of  
8 Scientology. And when the Church entered into the settlement  
9 agreement it wanted to stop that. And that principle is what  
10 led to all of these provisions that we're talking about here  
11 today. It wanted Armstrong out of its hair. And the way that  
12 that was accomplished was by the provisions that are in here.  
13 That's why there are more than one of them.

14 Now it may very well be that what Mr. Armstrong has  
15 done violates more than one provision. There's nothing wrong  
16 with that. And you may be correct, that may be enough. We  
17 may only have to show that.

18 THE COURT: What is it that he's supposed to do or  
19 refrain from doing? What should his behavior be?

20 MR. WILSON: Mr. Armstrong --

21 THE COURT: What if somebody comes to him and says,  
22 listen Armstrong, I understand that you were involved in this  
23 organization, I have some questions that I want to ask you if  
24 you -- please come to my office -- what is he supposed to do?

25 MR. WILSON: He's supposed to refrain -- supposed to  
26 decline the invitation.

27 THE COURT: And then what if the person says, well  
28 look here, it's up to you if you don't want to come but I'm

1 going to put you under subpoena -- what's he supposed to do  
2 then?

3 MR. WILSON: That's fine. He may --

4 THE COURT: And is he supposed to do anything to try  
5 to avoid being served with a subpoena?

6 MR. WILSON: No, all he's supposed to do is not do  
7 anything to help himself be subpoenaed; for example saying,  
8 fine, I'll be at the corner of such-and-such and such-and-such  
9 and --

10 THE COURT: Where is that provided for?

11 MR. WILSON: All -- that is provided for in  
12 paragraph 7-H which is on pages 10 and 11. Starts at the  
13 bottom of page 10, and basically says he agrees not to testify  
14 unless compelled by subpoena.

15 THE COURT: Yes.

16 MR. WILSON: And then the sentence that runs over  
17 says he won't make himself available for subpoena in any  
18 manner which invalidates the intent. In other words, it's one  
19 thing to say, you may subpoena me. It's another thing to say,  
20 you may subpoena me, I will be at such-and-such a place,  
21 subpoena me. Or, I'll come to your office and pick up the  
22 subpoena.

23 (Pause)

24 MR. WILSON: Should I continue?

25 THE COURT: Yes, what would be the -- what would be  
26 the distinction between those two things? What difference  
27 does it make whether he testifies under subpoena that he  
28 himself voluntarily accepts, the service of which he

1 facilitates, and whether he says subpoena me, look around for  
2 me and see if you can find me? What difference does that make  
3 as a matter of either policy or contractual draftsmanship?

4 MR. WILSON: Well, it may -- it may -- it depends on  
5 the facts. It may not make a difference. But I believe there  
6 is a difference between somebody saying, I'll testify under  
7 subpoena, and somebody going out of their way to accept a  
8 subpoena. And it's the language --

9 THE COURT: What's the principal legal difference?

10 MR. WILSON: The legal difference is not to do  
11 something that is contrary to the intent of the agreement,  
12 which is that he's not supposed to disclose his experiences.  
13 He's not supposed to use the subpoena as a way of getting  
14 around the agreement. If this --

15 THE COURT: Why is he not supposed to disclose his  
16 experiences? Simply because the parties have agreed to that?

17 MR. WILSON: That's right.

18 THE COURT: What do you do with the arguments that  
19 the other side makes that on the one hand Armstrong is  
20 privileged to keep the money, get the money, say and enter  
21 into an agreement which he concedes at least at one time he  
22 entered into without duress, says so explicitly, then later  
23 says, well there was duress? And on the other hand say, well  
24 now that I've got the money, by the way, some of the covenants  
25 are void as against public policy? How do you deal with the  
26 latter of the points?

27 MR. WILSON: That he -- that he's saying he should  
28 be able to keep the money and not --

1 THE COURT: Yes, the --

2 MR. WILSON: Well --

3 THE COURT: The things that Mr. Ford's brief refers  
4 to as the public policy arguments.

5 MR. WILSON: Well, I deal with those by saying that,  
6 in fact the cases that Mr. Greene relies on for that argument  
7 are not the cases that are closest in similarity to this case.

8 THE COURT: Why not?

9 MR. WILSON: Because, as you'll see in our brief,  
10 the Wakefield decision and the Maclean decision which are  
11 foreign court decisions but which are provided to you in the  
12 evidence, but not as evidence, are cases in which agreements  
13 virtually identical to this agreement were enforced by --

14 THE COURT: Were they really enforced?

15 MR. WILSON: They were by federal judges.

16 THE COURT: Really? What was the scope of the  
17 enforcement in those cases? What was the contracting party  
18 permitted to do and prohibited from doing?

19 MR. WILSON: Well, in the Wakefield case, the  
20 contracting party -- there was in fact a preliminary -- I  
21 think an injunction or a temporary restraining order granted  
22 against Ms. Wakefield.

23 THE COURT: What was the text of it?

24 MR. WILSON: I don't have the text here in front of  
25 me, Your Honor.

26 THE COURT: Is it in the decision?

27 MR. WILSON: I think it is -- it's implied from the  
28 decision.

1 THE COURT: Take a look at it and see. Tell me what  
2 you think it displays.

3 MR. WILSON: The problem with the Wakefield decision  
4 is, Your Honor, that it's under seal.

5 THE COURT: Well, how am I supposed to deal with it  
6 then?

7 MR. WILSON: If you look at the decision which is  
8 cited to you --

9 THE COURT: Find it and let's look at it. I don't  
10 have -- I mean, you don't have to begin a sentence with "if."  
11 Let's do it.

12 MR. WILSON: It's referred to in our -- in our  
13 opposition, reply to the opposition. And the quote from it,  
14 if you'll give me a minute -- which is on pages 4 and 5 of our  
15 brief, this is from the Wakefield decision.

16 THE COURT: Just a second. So where you want me to  
17 go in your brief is where?

18 MR. WILSON: It's page 4-5.

19 THE COURT: The brief filed on what date?

20 MR. WILSON: It was filed on the 20th.

21 (Pause)

22 MR. WILSON: And if you'd like to look at the  
23 decision, Your Honor, it is 1R to the Evidence in Support of  
24 Plaintiff's Amended Motion for Preliminary Injunction.

25 (Pause)

26 MR. WILSON: And if you look specifically --

27 THE COURT: All right, I have your brief that was  
28 filed on the 20th of May. You want me to look on page no. 4.

1 MR. WILSON: Right. And then if you have --

2 THE COURT: Wakefield doesn't seem to be mentioned  
3 on page no. 4.

4 MR. WILSON: It's --

5 THE COURT: This thing that I have is something  
6 called Plaintiff's Reply to Yanny's Amicus Curiae Brief.

7 MR. WILSON: It's the Reply to Defendant's  
8 Opposition to Plaintiff's Motion. Would you like my copy?

9 THE COURT: Yes, I'll take that or anything -- here,  
10 all right. I have that now.

11 MR. WILSON: Now, if you look at the bottom of page  
12 4 and the top of page 5.

13 (Pause)

14 THE COURT: Well, what is that?

15 MR. WILSON: That is a quote from the Wakefield  
16 appellate case which recognizes that Judge Kovachevich --

17 THE COURT: Well, I think maybe what we ought to do  
18 is take a look at the -- take a look at the opinion itself.

19 MR. WILSON: Right. That would be -- I have a  
20 specific paragraph there. That would be 1R to Evidence in  
21 Support of Plaintiff's Amended Motion for Preliminary  
22 Injunction filed May 7th. And you can have my copy if you'd  
23 like.

24 (Pause)

25 MR. WILSON: Your Honor, would you like my copy?

26 THE COURT: Yes. Pass it up through Ms. Cervantes.

27 MR. WILSON: Your Honor, she's not sitting there.  
28 May I approach?

1 THE COURT: Yes. Thank you.

2 MR. WILSON: You're welcome. And I have marked  
3 there the paragraph which shows that in fact the District  
4 Court issued an injunction against Marjorie Wakefield for  
5 violating the confidentiality provisions of the agreement.

6 (Pause)

7 THE COURT: Well, the appellate decision was to  
8 dismiss the purported appeal; correct?

9 MR. WILSON: That's right, and I think that there's  
10 -- not having it in front of me, I think that there's a --  
11 there was a reference, may have been by Judge Kovachevich to  
12 the -- actually to the Criminal Division for Contempt  
13 Proceedings. I'm not sure if that appears in that opinion or  
14 not. Yes, that was the appeal. And the appeal was dismissed.  
15 And it was an appeal from an --

16 THE COURT: How can I tell whether this was the same  
17 language or different language. How do I know what the  
18 agreement was in this case?

19 MR. WILSON: If you look -- if you look at the  
20 quotation that's on the top of page 5 and the bottom of page 4  
21 you'll see that it contains provisions very similar to this  
22 provision. For example, as we said in our brief, it included  
23 provisions enjoining Wakefield and the other members from  
24 discussing with other than immediate family members the  
25 substance of their complaints against the Church, the  
26 substance of their claims against the Church, alleged wrongs  
27 the Church had committed, and the contents of documents  
28 returned to the Church. The District Court approved the



1 settlement agreement, sealed the court files and dismissed the  
2 case with prejudice. Those provisions are very similar to  
3 this provision.

4 THE COURT: Are they similar to this provision or  
5 are they not since nobody has approved this settlement  
6 agreement in this case?

7 MR. WILSON: Whether or not the settlement agreement  
8 has been approved does not mean whether the provisions are  
9 similar.

10 THE COURT: Really?

11 MR. WILSON: Yes.

12 THE COURT: But it has to do with what the source of  
13 the obligations is. In the Wakefield case, the source of the  
14 obligations was the agreement approved by the Court. Here  
15 what you have is an agreement which hasn't been through that  
16 stage. Consequently you don't have a Court having made a  
17 preexisting determination based on familiarity with the issues  
18 involved in the dispute before it concerning the merits or  
19 demerits, the policy, advisability or inadvisability, or  
20 appropriateness or inappropriateness, or conscionability or  
21 unconscionability the provisions of the agreement.

22 MR. WILSON: That is certainly correct. However,  
23 the source of the obligation is the contract. And that's what  
24 we're suing on, the contract. The fact that in the --

25 THE COURT: Well, the policy issue was never so much  
26 as considered in Wakefield; right? In other words, the issue  
27 that Mr. Greene raises was not so much as considered in  
28 Wakefield.

1 MR. WILSON: Well, in fact it was considered and --

2 THE COURT: Not in the decision you've given me.  
3 That's the reason you and I studied it again at some length.

4 MR. WILSON: You can't see it from the decision, you  
5 can only see it from looking at the sealed files, which  
6 unfortunately you can't look at. But the fact is that the  
7 provisions are similar. Your distinction between whether it  
8 was court-ordered or not is a distinction. But I submit that  
9 it doesn't mean that the agreement is unenforceable. It shows  
10 that Judge Kovachevich did look at the agreement and did order  
11 its enforcement and the provisions are very similar to those  
12 here.

13 And that's a lot closer on its facts than the  
14 authorities cited by Mr. Armstrong. The authorities cited by  
15 Mr. Armstrong --

16 THE COURT: Well, is it your position that there is  
17 no dispositive authority on the point and that what we have to  
18 do is reason by analogy and principal?

19 MR. WILSON: Well, that of course depends upon your  
20 definition of dispositive authority. I believe that Wakefield  
21 is so close that it should be dispositive. However --

22 THE COURT: But Wakefield doesn't decide the issue.  
23 Wakefield talks about a decision made by a district or an act  
24 taken by a district court after which the Court of Appeal  
25 determined that an appeal that was brought to it was moot;  
26 consequently not a case you're controverting and consequently  
27 dismissed. Isn't that a fair statement of the procedural  
28 posture of Wakefield?

1 MR. WILSON: Yes it is. And it's true that the  
2 particular issues that Mr. Greene raises was not addressed by  
3 Judge Kovachevich. But it is also true that she did order the  
4 enforcement of the agreement. Now if that means that -- if  
5 "dispositive" means that it has to be exactly on all fours in  
6 every respect --

7 THE COURT: No, I mean at least the --

8 MR. WILSON: -- you're correct.

9 THE COURT: At least there must be some authority  
10 indicating that the legal point under consideration in this  
11 case was considered in another case and adequately briefed,  
12 argued and decided.

13 MR. WILSON: That's true. That's true. Your  
14 distinction is valid. I also submit to you the Trump case  
15 which we cited in our brief --

16 THE COURT: Okay, let's go to that.

17 MR. WILSON: -- which you can find as Exhibit B to  
18 -- in Ms. Bartilson's declaration which was not submitted for  
19 evidence but just because it's foreign authority.

20 THE COURT: Okay.

21 MR. WILSON: Now, in that case --

22 THE COURT: Just a second.

23 MR. WILSON: It is a New York state case by the way.

24 THE COURT: Hang on for a minute.

25 (Pause)

26 THE COURT: Why don't you see if -- do you contend,  
27 by the way, before we get off Wakefield, do you contend that  
28 Armstrong is discussing the substance of his complaint against

1 the Church?

2 MR. WILSON: Well yes, certainly he is.

3 THE COURT: To whom?

4 MR. WILSON: In those declarations, and I can give  
5 you the list of them if you like, he is going through his  
6 litany of the wrongs that he alleges that the Church committed  
7 against him. And he goes back for years. He talks about fair  
8 game and he talks about being followed and he talks about  
9 being harassed, and he talks about all those things. That's  
10 the substance of his complaint against the Church. That was  
11 the substance of his complaint against the Church in the  
12 Armstrong One case. And that's what his complaint has always  
13 been against the Church.

14 And even if it wasn't, the point that I'm making  
15 about the Wakefield decision is you've got provisions which  
16 could be characterized as quote "gag provisions" and they were  
17 upheld. The fact that the language may not be identical --

18 THE COURT: They weren't -- but I thought that you  
19 and I just disposed of that point. They were not upheld.

20 MR. WILSON: Well --

21 THE COURT: They were not ruled on in the decision  
22 that you've shown me. Isn't that the way you see it?

23 MR. WILSON: They were upheld by the district court  
24 and the appeal was dismissed.

25 THE COURT: Is the decision that you have given me  
26 the decision from a case book?

27 MR. WILSON: Yes, it's a Fed. 2d case. I believe.

28 THE COURT: All right. So you think that this

1 decision is where? Where would I find this? You cited at 938  
2 Fed. 2d 1226 but that's not what you've given me.

3 MR. WILSON: I think you have the advance sheet  
4 version.

5 THE COURT: So that's what -- that's why you think  
6 the page numbering is different?

7 MR. WILSON: I think that's right. I -- I think we  
8 then went back and got the official cite when it was correct.

9 THE COURT: Okay.

10 MR. WILSON: My point on that is that case is much  
11 more similar to this case than the cases cited by defendants.

12 THE COURT: Do you want to talk about Trump?

13 MR. WILSON: Yes, I would like to mention Trump.

14 THE COURT: Go ahead.

15 MR. WILSON: What happened in Trump was --

16 THE COURT: Where would I find it?

17 MR. WILSON: That would be the exhibit A to Ms.  
18 Bartilson's dec which is a foreign court decision. And I can  
19 hand it to you if you'd like.

20 THE COURT: Just give me the official citation of  
21 it.

22 MR. WILSON: We just have the slip opinion at this  
23 point.

24 THE COURT: Why?

25 MR. WILSON: It's -- I think it's just -- it's very  
26 recent, it hasn't come out in the official reports yet; it's  
27 an April case. April 16 in fact.

28 (Pause)

1 THE COURT: Where is it?

2 MR. WILSON: Exhibits in Support of Plaintiff's  
3 Reply, May 21, 1992, Exhibit A to Bartilson Dec.

4 THE COURT: Okay.

5 (Pause)

6 MR. WILSON: And if you see that -- on page 3 of  
7 that opinion there's a very long quote directly from the  
8 agreement in which Mrs. Trump is not allowed without her  
9 husband's consent to publish any memoirs, diaries, et cetera,  
10 et cetera, et cetera. And then what happened was apparently,  
11 on its own motion, the trial court struck that provision as  
12 being void. Mrs. Trump went -- and there was a very harsh  
13 penalty for violating this. Mrs. Trump went on and in fact  
14 published a book. And then the Court of Appeal held that the  
15 striking of that provision by the trial court was in error.  
16 And in fact stated --

17 THE COURT: When you say the "Court of Appeal" what  
18 are you talking about? This is a Supreme Court Appellate  
19 Division decision that you've given me. Is there a decision  
20 by the New York Court of Appeal?

21 MR. WILSON: I'm sorry. When I said the "Court of  
22 Appeal" I meant it generically. I meant the Supreme Court  
23 Appellate Division.

24 THE COURT: Okay.

25 MR. WILSON: I didn't mean the "Court of Appeal" as  
26 we speak of it. Then the Court of Appeal held that that  
27 striking of that provision was in error. And in response to  
28 the argument that -- in fact, if you look on page 5 it says,

1 "It is well settled that in the absence of any affront to  
2 public policies, parties to a civil dispute have a right to  
3 chart their own litigation course." Then it goes on about  
4 settlement, talks about some New York cases in which there was  
5 a waiver of due process and equal protection rights. And it  
6 goes on.

7 And then it says -- I'm looking for the citation  
8 here -- that the -- it was a private settlement agreement, and  
9 the fact that the court was involved in it did not mean that  
10 state action was involved.

11 In fact on page 7, the wife claimed quote,  
12 READING:

13 "Absent a compelling state interest the federal  
14 and New York State constitutions bar a court from  
15 issuing a prior restraint barring an individual from  
16 ever publishing any statements about a specific  
17 subject."

18 THE COURT: Do you have a LEXIS cite for this?

19 MR. WILSON: A LEXIS cite. We --

20 THE COURT: Yes, any standardized legal research  
21 cite so that --

22 MR. WILSON: We do not --

23 THE COURT: -- one doesn't have to rely exclusively  
24 on the material that you've submitted?

25 MR. WILSON: I don't have one now. I can try to get  
26 one for you. We got it from New York counsel -- Mr. Laziest  
27 who was involved in this motion. And the Court held there was  
28 no state action involved in this particular case with that

1 confidentiality provision. That's also much closer to this  
2 case than the cases cited by the defendants.

3 (Pause)

4 THE COURT: How would you distinguish, if at all,  
5 the cases cited by defendants either on their facts or as a  
6 matter of principal?

7 MR. WILSON: How would I distinguish all of them?

8 THE COURT: Any of them. Whatever it is you want to  
9 do.

10 MR. WILSON: Well, let's start with the Mary B&R  
11 case. In that case there was a charge of child abuse against  
12 a doctor and a confidential settlement agreement which was  
13 much, much, much broader than the one here. Basically it  
14 said, not going to testify, not going to do anything, I can't  
15 say anything even if I'm subpoenaed. And the Court refused to  
16 enforce that. And if you read that decision it's clear that  
17 the rationale that the Court is using is that the division of  
18 medical quality assurance -- I'm sorry, it's the Board of  
19 Medical Quality Assurance, has a public interest in knowing  
20 what doctors are doing.

21 So there's two distinctions between this case and  
22 that case. Number one, the public interest of the Board of  
23 Medical Quality Assurance. Which, although Mr. Armstrong  
24 might think he's a champion of the public interest he  
25 certainly doesn't rise to the level of the Board of Medical  
26 Quality Assurance.

27 And number two, the provision in that -- in that  
28 case is far broader than the case that -- than the provisions



1 here. That's the Mary B&R case.

2 Now the other case that they rely on is the Loaiasis  
3 case, P-I-C'L, Loaiasis. And in that case the agreement  
4 provided that the complainant in a criminal case would refuse  
5 to prosecute. And because the complainant had no control over  
6 the prosecution once he made the complaint the Court held the  
7 only meaning the contractual term quote "refuse to prosecute"  
8 could have was that the complainant would refuse to testify.  
9 And here the agreement doesn't say he's going to refuse to  
10 testify, it just says he has to be subpoenaed.

11 THE COURT: Precisely what do you contend the  
12 language of a proper preliminary injunction should be?

13 MR. WILSON: The language of a proper preliminary  
14 injunction should be the language of the temporary restraining  
15 order which Judge Dufficy entered. Which we -- which is in  
16 the record. And it's also attached --

17 THE COURT: State it for me. Read it out loud.

18 MR. WILSON: Okay.

19 THE COURT: Or do whatever you want so that I have  
20 it before me and I can see --

21 MR. WILSON: Well, it is -- it is --

22 THE COURT: -- line by line what you're talking  
23 about.

24 MR. WILSON: It is -- the easiest way to do it would  
25 be to refer you to an exhibit to Ms. Bartilson's declaration  
26 which is not in evidence but is certainly before you because  
27 it's the record in this case. And that is Exhibit C to Ms.  
28 Bartilson's declaration which is in the same packet that the

1 Trump decision was in.

2 THE COURT: Well Exhibit C as far as I can tell is  
3 the Breckenridge order dismissing action.

4 MR. WILSON: No, I --

5 THE COURT: Maybe you mean Exhibit --

6 MR. WILSON: In my packet Exhibit C is the temporary  
7 restraining order of March 5.

8 THE COURT: Really? Maybe I'm looking at the wrong  
9 piece of paper then. No, you're right. I'm looking at  
10 Berry's declaration. Just a minute.

11 (Pause)

12 THE COURT: You're correct and I was mistaken. I  
13 have it here. It is Exhibit C of course.

14 MR. WILSON: The language that -- I submit this  
15 language has actually worked while it was in effect.  
16 Basically it starts on page 2 with paragraph 2. It refers to  
17 the specific paragraph numbers of the agreement and continues  
18 through page 3. It also contains paragraph 7 which was  
19 inserted in response to Mr. Greene's concern that Mr.  
20 Armstrong not be prohibited from working for him. And of  
21 course it doesn't; it just prohibits him from working for Mr.  
22 Greene except on matters involving the Church of Scientology.  
23 And I don't think that I can do any better than this language.

24 THE COURT: Turn to page no. 1, line 27. Why should  
25 that language be deleted?

26 MR. WILSON: That language was deleted at the  
27 request of Mr. Berry and he can, even though he's not supposed  
28 to speak I would ask him if I'm wrong to tell me. Mr. Berry

1 and I had a telephone conversation when we were doing the  
2 proposed order, and Mr. Berry was concerned that that might  
3 apply to his client, Mr. Yanny, in preparing his case for  
4 trial. And that's why that was stricken. Is that accurate?

5 MR. BERRY: It was the acting in concert concern.

6 MR. WILSON: Right, that your client --

7 MR. BERRY: Yes.

8 MR. WILSON: -- might have been acting in concert.  
9 That's why that was stricken.

10 THE COURT: So any order, if there is one, should  
11 just exclude attorneys at law?

12 MR. WILSON: Well, no. Because if Mr. Armstrong  
13 acts through his attorney to violate the provisions of the  
14 agreement it should apply to that. What Mr. Berry wanted  
15 stricken and the reason he wanted it stricken was that Mr.  
16 Yanny was involved in the RTC versus Yanny case, not as an  
17 attorney for Mr. Armstrong. And he -- I didn't believe that  
18 this would apply to Mr. Yanny anyway but Mr. Berry was  
19 concerned, and we struck the language. I didn't see that it  
20 hurt to strike it.

21 But it was not -- we do still have agents in there.  
22 So if someone is Mr. Armstrong's agent then he still is  
23 covered by the temporary restraining order. And hopefully the  
24 preliminary injunction.

25 (Pause)

26 THE COURT: Is there evidence that Armstrong is  
27 publishing books or magazine articles?

28 MR. WILSON: No.

1 THE COURT: Why should there be an order on it?

2 MR. WILSON: Well, Your Honor, I suppose the reason  
3 that there shouldn't be -- that there should be an order on it  
4 is that since he's violated the other provisions we don't  
5 want, by not ordering him to comply, to imply that he can  
6 violate the other provisions. And perhaps more importantly, I  
7 don't want to have to come back in here again and say, well I  
8 want to have this expanded because now Mr. Armstrong is  
9 publishing book and magazine articles. But I will concede to  
10 you that we have no evidence that he's doing that.

11 THE COURT: Let's -- is there any other legal  
12 authority that you want to cite or talk about?

13 MR. WILSON: Yes, there is. The court and case  
14 which is before you, Your Honor. In that case Judge Savitch  
15 supervised the settlement. And basically Mr. Corydon objected  
16 after entering into it on the record. And Judge Savitch  
17 enforced it, made him sign it.

18 MR. GREENE: Your Honor, I must object. That's not  
19 in evidence. Don't mean to interrupt but I --

20 THE COURT: Well, there's an objection on the ground  
21 that there's --

22 MR. GREENE: On the grounds that it's not --

23 THE COURT: -- been a reference to --

24 MR. GREENE: -- before the -- that it is --

25 THE COURT: What do you contend is in the evidence?

26 MR. WILSON: I think --

27 THE COURT: What do you contend is in the record and  
28 tell me --

1 MR. WILSON: I think that I --

2 THE COURT: -- where you think it is?

3 MR. WILSON: I think I put Mr. Drescher's  
4 declaration in yesterday, according to my notes.

5 THE COURT: Let's find out. Tell me where you think  
6 that's referred to. Just a minute.

7 MR. GREENE: And I respectfully differ.

8 THE COURT: Just a second.

9 MR. WILSON: If it's not in then it's not in. But I  
10 think --

11 MR. GREENE: Mr. Drescher's --

12 MR. WILSON: I thought it was there.

13 MR. GREENE: Excuse me, I'm sorry. Mr. Drescher's  
14 declaration was not in, and in fact counsel this morning as we  
15 -- started saying that he wanted to introduce both the  
16 Bartilson and Drescher declarations in rebuttal.

17 MR. WILSON: Well then I mis-spoke.

18 THE COURT: Yes, I don't have a reference to it. Do  
19 you have a specific recollection? Do you know what --

20 MR. WILSON: Well, the only --

21 THE COURT: -- item it was?

22 MR. WILSON: I was taking notes from my list of what  
23 I was going to put in yesterday and I had a check mark next to  
24 Mr. Drescher's declaration. And Ms. Bartilson said last night  
25 when we were going over it --

26 THE COURT: No, you did introduce one Laurie  
27 Bartilson declaration. That was Exhibit 5.

28 MR. WILSON: That's right. That's a different one.

1 THE COURT: Okay. No, I don't have the Drescher  
2 declaration that I can see on my notes.

3 MS. BARTILSON: I have it as no. 17.

4 MR. WILSON: We have it as no. 17 on our -- on the  
5 list of things that we submitted. I thought I had submitted  
6 it.

7 (Pause)

8 MS. BARTILSON: And there were some exhibits to it  
9 as well.

10 MR. WILSON: What?

11 (Counsel Colloquy)

12 THE COURT: Go ahead with your argument. I think  
13 that Mr. Greene is correct.

14 MR. WILSON: The other legal authorities -- there's  
15 the Maclean case, which is similar to the Wakefield case.

16 THE COURT: Where's the Maclean case?

17 MR. WILSON: Maclean case? Do you have it?

18 (Counsel Colloquy)

19 MR. WILSON: It was a supplemental submission. We  
20 didn't bring all of the --

21 THE COURT: What's the citation?

22 (Pause)

23 MR. WILSON: It was an 11th Circuit slip opinion.

24 THE COURT: Fine. What's the citation?

25 MR. WILSON: I don't have a citation for it.

26 THE COURT: Where is it in the record or in the  
27 materials that are submitted to me so that we can pull it and  
28 you and I can discuss it?

1 MR. WILSON: There was a supplemental exhibit that  
2 was filed.

3 THE COURT: When? What date?

4 MR. WILSON: I don't have that. It was filed on  
5 April 21st.

6 THE COURT: Under cover of what document? What --  
7 if you want to look at a piece of paper --

8 MR. WILSON: I'm sorry, Your Honor, I --

9 THE COURT: -- tell me where it is, what piece of  
10 paper you want me to look at it. I'll be happy to do it.

11 MR. WILSON: Your Honor, I can't give you that  
12 information so I can't ask you to look at it.

13 THE COURT: All right, any other legal authorities  
14 you want to refer to?

15 MR. WILSON: The only other authorities are the ones  
16 that are cited in our brief; Hoffman versus United  
17 Telecommunications, Inc. Would you like me to tell you --

18 THE COURT: Yes, let's get the cite on that.

19 MR. WILSON: That's 687 F.Supp. 512. That was a  
20 confidential settlement agreement in an employee  
21 discrimination case.

22 THE COURT: Now you -- have you supplied that case  
23 to me?

24 MR. WILSON: Okay, we -- I don't -- I don't know,  
25 Your Honor. Those are all the authorities.

26 THE COURT: Where would you like me to look to find  
27 the case so that I can discuss it with you now? Or would you  
28 rather not have it discussed now or?

1 MR. WILSON: I don't think --

2 THE COURT: Just exactly what do you want to do  
3 about it?

4 MR. WILSON: I -- I can't -- I can't cite you to a  
5 place where you can find it so.

6 THE COURT: Okay. Is there any case, pardon me,  
7 that you know of in which an appellate court in California has  
8 held that provisions of the kind involved in the agreement  
9 that is presented in this case are proper and enforceable  
10 agreements and/or what acts violate that agreement?

11 MR. WILSON: There is no appellate case that I'm  
12 aware of --

13 THE COURT: Okay.

14 MR. WILSON: -- in which --

15 THE COURT: How about in any other state?

16 MR. WILSON: I was about to -- the only appellate  
17 case that I think in California that comes close.

18 THE COURT: Yes.

19 MR. WILSON: Doesn't talk about provisions similar  
20 to this -- is ITT Telecom versus Dooley, a --

21 THE COURT: Let's have the cite.

22 MR. WILSON: ITT Telecom Products --

23 THE COURT: Versus?

24 MR. WILSON: Dooley, D-O-O-L-E-Y; 215 Cal.App. 3d  
25 307.

26 THE COURT: And your theory is that's that closest  
27 case?

28 MR. WILSON: That's a case that's close on



1 principal.

2 THE COURT: Okay.

3 MR. WILSON: In other words it was a non --

4 THE COURT: Okay, let's -- let's wait for just a  
5 second, I'll get that and you and I can look at it and study  
6 it together. Because there's some questions I need to ask you  
7 about that one.

8 (Pause)

9 THE COURT: Tell me what portion of it you think is  
10 pertinent on principal.

11 MR. WILSON: Well, on principal you have to read the  
12 entire case because what it basically says, there was a  
13 contractual nondisclosure provision and the Court held that  
14 that was a common provision, although it was in the employment  
15 context in that it was a nondisclosure of the type typically  
16 entered into in certain kinds of employment relationships.  
17 But the person who signed it made a constitutional free speech  
18 argument and the Court said no, there's nothing wrong with  
19 somebody agreeing --

20 THE COURT: Well, the confidentiality portion of it  
21 begins at page 317.

22 MR. WILSON: And if you go to 319 that's where the  
23 Court --

24 THE COURT: Okay.

25 MR. WILSON: -- talks about that there's -- that  
26 that's not a free speech violation.

27 THE COURT: Yes. All right. Would the fact that  
28 the relationship in ITT Telecom Products, Corp. versus Dooley

1 was an employment relationship rather than a -- rather than  
2 the relationship involved in this case make any difference?

3 MR. WILSON: Well actually, I think it makes a  
4 difference in our favor.

5 THE COURT: Why?

6 MR. WILSON: Because I think that there's much more  
7 of a public policy in enforcing a settlement agreement than in  
8 enforcing an employment agreement with a nondisclosure  
9 provision. I concede, it's a difference. And I didn't  
10 represent to the Court that the case was on all fours but that  
11 the principal should apply.

12 THE COURT: All right. What do you -- pardon me.  
13 What do you contend the evidence shows about the specific acts  
14 that Armstrong is engaging in contrary to the provisions of  
15 the agreement?

16 MR. WILSON: Armstrong worked as a paralegal in the  
17 Yanny case. And that is shown by the transcript of  
18 proceedings in RTC v. Yanny, page 25. It is Exhibit 1-E to  
19 our Request for Judicial Notice in Support of the Preliminary  
20 Injunction.

21 THE COURT: Now if he rendered merely routine  
22 clerical and stenographic services, would that be subject to  
23 being restrained?

24 MR. WILSON: Yes.

25 THE COURT: Why?

26 MR. WILSON: The reason is because the agreement  
27 prohibits any assistance. And there's a good reason for that.  
28 Because how are we supposed to know -- think about it. Let's

1 posit your hypothetical. Mr. Armstrong has just written --

2 THE COURT: Where is the agreement? Tell me the  
3 language in the agreement you're talking about.

4 MR. WILSON: Okay. The language in the agreement is  
5 in paragraph -- it's paragraph 7, and it's paragraph I believe  
6 7 -- I think it's 7-E.

7 THE COURT: No, I think it's 7-G but it doesn't make  
8 any difference. You pick the paragraph you want.

9 MR. WILSON: Oh, you know Your Honor, I handed up --  
10 the reason why I don't have it is because I think it's in the  
11 thing I handed up to you.

12 THE COURT: Do you? Okay.

13 MR. WILSON: Yeah.

14 THE COURT: Here's what you handed up to me. This  
15 is called Evidence Submitted in Support of Plaintiff's Amended  
16 Motion for Preliminary Injunction, filed May 7, 1992 and I'm  
17 giving that back to -- Ms. Cervantes will take it, if you  
18 don't mind. Just go around there. Thank you.

19 (Pause)

20 MR. WILSON: Your Honor is right. It is paragraph  
21 7-G and it says, "will not voluntarily assist or cooperate  
22 with any person adverse to Scientology in any proceeding  
23 against any of the Scientology organizations, individuals, et  
24 cetera." And the reason why that provision is so broad is  
25 precisely to cover the hypothetical which Your Honor posited,  
26 in which Mr. Armstrong is merely rendering clerical  
27 assistance.

28 And it has to do with the difficulty of enforcement.

1 How are we supposed to enforce an agreement specifically where  
2 Mr. Armstrong says, well I can do it because I'm only doing  
3 clerical work that somebody else could do. There's really no  
4 way to tell that. And I think that would put the Court in the  
5 untenable position of having to figure out whether Mr.  
6 Armstrong was typing or whether he was giving some other kind  
7 of assistance. That's why that provision is so broad, that's  
8 why it should be so broad. And that's why in the hypothetical  
9 that Your Honor gave it would be a violation.

10 (Pause)

11 THE COURT: But you could not prevent him from being  
12 a paralegal or engaging in any other occupation generally or  
13 engaging in paralegal activities with any other litigant  
14 against any other parties; right?

15 MR. WILSON: Absolutely not and we don't contend the  
16 agreement applies to that.

17 THE COURT: Okay. What else do you contend that he  
18 was doing and where do you contend that that was violated with  
19 the agreement and that ought to be restrained?

20 MR. WILSON: Would you like me to give -- I have  
21 some more cites for the fact that he worked as a paralegal in  
22 Yanny. I can skip over those unless you want me to give them  
23 to you.

24 THE COURT: No, just go to the next act of --

25 MR. WILSON: Okay.

26 THE COURT: -- what you contend is violation and  
27 show me where they --

28 MR. WILSON: He admits, Armstrong admits helping

1 Yanny represent the Aznarans. That is paragraph 2, 3 and 4 of  
2 Mr. Armstrong's July 19, '91 declaration. And that is Exhibit  
3 1-F to the Request for Judicial Notice that I just referred  
4 to, the one filed in support of --

5 THE COURT: What does that mean, "helped Yanny?" Is  
6 he a lawyer? It doesn't seem to -- that doesn't seem so from  
7 the record.

8 MR. WILSON: Yanny is a lawyer.

9 THE COURT: No, no. Is he, Armstrong a lawyer. It  
10 doesn't seem so --

11 MR. WILSON: Well --

12 THE COURT: -- from the record.

13 MR. WILSON: No, he's not a lawyer.

14 THE COURT: How does he quote "help Yanny represent  
15 the Aznarans" end quote?

16 MR. WILSON: He basically -- he describes those --  
17 he describes what he did in paragraphs 2, 3 and 4. It's a  
18 hand-written declaration. And it talks about him receiving a  
19 telephone call from Mr. Yanny. Yanny says, I need your help.  
20 Yanny reiterated a request for help. And then it goes on and  
21 describes that Yanny was representing Rick and Vicki Aznaran  
22 who had been induced to fire their attorney, and Yanny had  
23 come in to help. Yanny explains what he needed.

24 Mr. Armstrong says he went to L.A. and then  
25 describes that he counseled Mr. Yanny regarding some other  
26 things. He travelled to Los Angeles, he stayed at Yanny's  
27 home, did work in his office, and did write and execute a  
28 declaration giving my knowledge of the effect of the December

1 1986 settlement agreements on the ability of the Aznarans and  
2 other individuals victimized by quote "the organization."

3 THE COURT: Tell me what exactly he did there? He  
4 --

5 MR. WILSON: Okay.

6 THE COURT: -- went to Yanny's house and then he did  
7 what?

8 MR. WILSON: Went to Yanny's house, quote "did work  
9 in his [Yanny's] office." And I can't give you the page cite  
10 because it's not numbered.

11 THE COURT: That's all right.

12 MR. WILSON: Did work in Yanny's office.

13 THE COURT: What does that mean? What is it that  
14 he's telling us happened?

15 MR. WILSON: Well, then he goes on. And I guess  
16 what he means -- we don't know exactly what he means by  
17 "work." But he says,

18 READING:

19 "...and did write and execute a declaration on  
20 July 16 giving my knowledge of the effect of the  
21 December 1986 group settlement agreements on the  
22 ability of the Aznarans and other individuals  
23 victimized by the organization to obtain proper  
24 legal representation."

25 THE COURT: Now your theory is that Yanny could have  
26 telephoned him; Armstrong could have spoken with him;  
27 Armstrong would have said, listen, I can't help you, I mean I  
28 can't do anything except testify under oath in a response to a

1 subpoena; Yanny could have put him under subpoena. Then  
2 Armstrong would have showed up and he would have said the same  
3 thing that was in the declaration, and that would be entirely  
4 proper and not subject to being restrained in any way; right?

5 MR. WILSON: That's right.

6 THE COURT: Okay. Go ahead. What else did you --  
7 do you think the evidence shows that Armstrong did that is  
8 contrary to the terms of the agreement? You think this is a  
9 7-G violation by the way --

10 MR. WILSON: Yes, I do.

11 THE COURT: -- what you just talked about, right?

12 MR. WILSON: Yes I do.

13 THE COURT: Okay.

14 MR. WILSON: If you look at the Bartilson dec -- I'm  
15 sorry, the --

16 THE COURT: Tell me the act and then we'll go to the  
17 --

18 MR. WILSON: The act is his helping Mr. Greene in  
19 the Aznaran litigation. And that is referred to in the letter  
20 to Eric Lieberman from Jerry Armstrong, which is Exhibit 5 of  
21 the Evidence in Support of the Amended Motion for Summary  
22 Judgment.

23 THE COURT: You contend that that was a violation of  
24 what provision of the agreement?

25 MR. WILSON: That's also a violation of 7-G.

26 THE COURT: So you think that's a 7-G violation.

27 MR. WILSON: Right.

28 THE COURT: And where do you want to look in the

1 evidence?

2 MR. WILSON: That is Exhibit 5 -- I have it in mine.

3 (Counsel Colloquy)

4 MR. WILSON: Exhibit 5 to Evidence Submitted in  
5 Support of Plaintiff's Motion for Preliminary Injunction.

6 THE COURT: Get that for me please, Ms. Cervantes.

7 (Pause)

8 THE COURT: Thanks. What was the filing date?

9 MR. WILSON: Your Honor, I mis-spoke. I gave you --  
10 I gave you a cite for a supporting, for evidence supporting  
11 that but it's not what -- it's not the Lieberman letter. That  
12 -- the cite I gave you is to the -- is to Ms. Bartilson's  
13 declaration which does establish the same thing. It's Ms.  
14 Bartilson's declaration which was admitted yesterday, in which  
15 she describes how she --

16 THE COURT: Find that for me.

17 MR. WILSON: -- had been in telephone contact with  
18 Mr. Greene's office. Mr. Armstrong --

19 THE COURT: What's the cover page?

20 MR. WILSON: The cover is Evidence Submitted in  
21 Support of Plaintiff's Amended Motion for Preliminary  
22 Injunction.

23 (Pause)

24 THE COURT: What's the filing date?

25 MR. WILSON: May 7, 1992.

26 (Pause)

27 THE COURT: I have it. And you want me to be at  
28 Exhibit what?



1 MR. WILSON: It's Exhibit B to Exhibit II, which is  
2 a letter from Mr. Armstrong to Mr. Lieberman in which he  
3 describes that he's working on the Aznaran litigation. Now  
4 that letter is not a violation; it's evidence of a violation.

5 (Pause)

6 THE COURT: Go right ahead.

7 MR. WILSON: Okay. That's evidence of the  
8 violation. He also filed a declaration or gave a declaration  
9 in the Aznaran case dated 9-3-91. That's 1-L in that same  
10 packet.

11 THE COURT: It's 9-3-91?

12 MR. WILSON: Yes.

13 THE COURT: And its location is what in this packet?

14 MR. WILSON: It's 1-L in that packet.

15 THE COURT: 1-L.

16 MR. WILSON: It's entitled Declaration of Gerald  
17 Armstrong.

18 (Pause)

19 THE COURT: Go ahead.

20 MR. WILSON: And then --

21 THE COURT: Just a second. This would be --

22 (Pause)

23 THE COURT: And the previous letter, the Lieberman  
24 letter or the letter to Lieberman?

25 MR. WILSON: Right. That is --

26 THE COURT: Where did you locate that?

27 MR. WILSON: That was Exhibit B to Exhibit II to the  
28 same packet that you have there; Evidence Submitted in Support

1 of Plaintiff's Amended Motion, et cetera.

2 THE COURT: Go ahead with your review of the  
3 evidence concerning what you think are Armstrong's acts in --  
4 wait a minute before we do that. You contend that the  
5 declaration in the Aznaran case is a 7-G?

6 MR. WILSON: That's correct.

7 THE COURT: Go ahead with any other review of  
8 evidence concerning acts that you contend Armstrong has  
9 committed which you contend to be in violation of the --

10 MR. WILSON: He gave --

11 THE COURT: -- agreement and which should be  
12 restrained, and give your agreement citation.

13 MR. WILSON: That is -- another one would be the  
14 declaration of Gerald Armstrong dated 7-16-91 in the Yanny  
15 case. That is Exhibit 1-K in the same packet, right before  
16 the -- actually, as long as you're looking, it's J and K;  
17 they're both declarations of Armstrong, dated 7-16-91. And  
18 whether we want to consider them one violation or two appears  
19 to me to be of very little consequence.

20 THE COURT: Well, let's take Exhibit K. That talks  
21 about a conversation to which Armstrong claims he was a  
22 witness which allegedly occurred on July 16, 1991.

23 MR. WILSON: Correct.

24 THE COURT: Your view is that he would prohibited  
25 from doing that?

26 MR. WILSON: My view is he's prohibited from  
27 voluntarily giving a declaration. It's not that he's --

28 THE COURT: Well, do you mean to say that there need

1 be no nexus between Armstrong's behavior on the one hand and  
2 something having to do with information that he has because of  
3 his affiliation with your client on the other hand?

4 MR. WILSON: Like --

5 THE COURT: In other words, if somebody -- let's say  
6 that this is what's happening. Let's say that there is a  
7 lawsuit in which your client is involved and he is a witness  
8 to something but it does not depend on his having preexisting  
9 information concerning your client. Let's assume for example  
10 that he's here in court and a lawsuit is going on. And on the  
11 way out the lawyers get into a fight. One of the lawyers  
12 says, look Armstrong, give a declaration will you to show that  
13 the other fellow took the first punch and he says, well all  
14 right, I'll do it. And he does.

15 The lawyer who asks for the declaration is adverse  
16 to Scientology and adverse to -- in that lawsuit, and adverse  
17 to the other person who hit him. Your contention is that that  
18 would be improper?

19 MR. WILSON: Well, to be honest with you, I haven't  
20 thought of that particular situation.

21 THE COURT: The reason you haven't thought of it is  
22 because the language in the agreement is susceptible of  
23 potentially indeterminate interpretations; correct?

24 MR. WILSON: Well, I suppose you could say that. I  
25 don't believe it's susceptible to those determinations. I  
26 think that if Armstrong is aiding persons adverse to  
27 Scientology he's not supposed to do that and if he's doing it,  
28 and let's use your hypothetical. If the lawyer wants to use

1 Mr. Armstrong's testimony all he has to do is take a  
2 deposition. You can take any agreement and make a  
3 hypothetical that perhaps wasn't intended to be covered by the  
4 language but which is in fact covered by it.

5 THE COURT: Well no, what we're trying to do is  
6 we're trying to construe the agreement reasonably so that we  
7 know what it means to quote "voluntarily assist or cooperate  
8 with any person adverse to Scientology in any proceeding  
9 against any of the Scientology organizations" and so forth,  
10 end quote. Voluntary assistance or cooperation doesn't mean  
11 voluntarily assistance or cooperation which doesn't trade on  
12 some special talent or skill that Armstrong has.

13 What if, for example, there's a lawsuit between  
14 Scientology on the one hand and the Red Cross.

15 MR. WILSON: Your Honor --

16 THE COURT: Armstrong gives money to the Red Cross.  
17 He says I think it's good, I think people ought to be helpful  
18 when they have floods. You certainly wouldn't be able to beef  
19 about --

20 MR. WILSON: Obviously --

21 THE COURT: -- that, would you?

22 MR. WILSON: Obviously not. I mean, obviously the  
23 intent of the agreement was that there had to be some  
24 connection between what Armstrong was doing and what he had  
25 previously been involved with with the organization. And in  
26 this declaration there really is. I mean, he's with Yanny  
27 because of his previous connection with the organization.  
28 He's helping Yanny because of his previous connection with the

1 organization; he's not helping Yanny because he just happens  
2 to be there, as in your hypothetical where he just happens to  
3 be in court. I think that is a distinction that needs to be  
4 made.

5 THE COURT: The distinction that I would make, the  
6 question is whether the contract makes that distinction.

7 MR. WILSON: Well, the contract doesn't explicitly  
8 make that distinction but it says "voluntarily aiding persons  
9 adverse to Scientology." And I think in your hypothetical,  
10 particularly the Red Cross hypothetical, obviously there has  
11 to be some reasonable construction of the contract. And no  
12 contract -- I mean I submit to Your Honor that any contract  
13 can be -- you can do to any contract what you did with this  
14 hypothetical to this one. You can make a hypothetical that is  
15 not covered by it but that obviously the parties entered into  
16 it would not contend the situation applied. There's -- we  
17 would not go to court and try to restrain Mr. Armstrong from  
18 giving money to the Red Cross.

19 THE COURT: What other acts do you contend the -- so  
20 you contend this is a 7-G violation?

21 MR. WILSON: That's right.

22 THE COURT: What other acts do you contend the  
23 evidence shows Armstrong committed in what you claim to be a  
24 violation of the agreement which under your client's theory --

25 MR. WILSON: I think that --

26 THE COURT: -- ought to be restrained?

27 (Counsel Colloquy)

28 MR. WILSON: I believe that Exhibit E to Mr.

1 Drescher's declaration. The declaration didn't come in but I  
2 think that it's Exhibits in Support of Plaintiff's Reply to  
3 Defendants' Opposition to Motion for Preliminary Injunction  
4 and Reply to Amicus Brief of Joseph Yanny, Volume I. And they  
5 --

6 THE COURT: Well, is there any evidence standing for  
7 the proposition that he's violated 18-D which is the agreement  
8 provision which disables the parties from disclosing the  
9 contents of the agreement?

10 MR. WILSON: Well yes. He's filed the agreement in  
11 court in the Marin County action. That's -- that's here.  
12 He's --

13 THE COURT: How could he avoid doing that?

14 (Counsel Colloquy)

15 MR. WILSON: He attaches that agreement to at least  
16 two of the declarations that are in the record here. And it  
17 is -- the exhibit I just referred to? 1-J?

18 THE COURT: Yes.

19 MR. WILSON: He attaches that declaration, he did in  
20 the case in which it was filed.

21 THE COURT: Any other arguments that you have at all  
22 that you haven't already made?

23 MR. WILSON: I do have some arguments regarding the  
24 -- the duress argument. First of all --

25 THE COURT: Assuming that there is a preliminary  
26 injunction in favor of your client, what should the amount of  
27 the undertaking be? Is there any way that the case can be  
28 tried for less that -- you tell me how much money.

1 MR. WILSON: You mean how much the attorneys fees  
2 would be to try the case?

3 THE COURT: Sure.

4 MR. WILSON: On our side?

5 THE COURT: On the other side.

6 MR. WILSON: On the other. It's hard for me to  
7 estimate the other side. Give me a minute.

8 THE COURT: Well, figure out what you would charge.  
9 The other side is going to charge at least what you charge.

10 MR. WILSON: Probably fifty thousand dollars  
11 (\$50,000). And Your Honor, and I tell this to my clients,  
12 giving estimates on how much it's going to take to try a case  
13 is almost impossible.

14 THE COURT: How do you figure you're going to have  
15 to arrange your affairs to get the case ready for trial? What  
16 are you going to do for example? You're going to take the  
17 depositions of whom?

18 MR. WILSON: Take the depositions of Mr. Armstrong,  
19 Mr. Greene, and Mr. Flynn. Perhaps another lawyer that Mr.  
20 Armstrong worked for, Mr. Elstead. Perhaps two more  
21 depositions.

22 THE COURT: So you visualize six depositions. How  
23 long will they last?

24 MR. WILSON: Probably Mr. Armstrong's would not last  
25 longer than two days. I would say none of the others would  
26 last longer than a day.

27 THE COURT: So that would be, it looks to me like  
28 seven days of depositions. Do you visualize any motion

1 practice?

2 MR. WILSON: We -- we might be able to resolve some  
3 issues by summary judgment. However, the change in law  
4 requiring that, you know, an entire cause of action be taken  
5 care of by summary judgment might make that impossible.

6 THE COURT: How many days do you think it will take  
7 to try the case?

8 MR. WILSON: A week to two. And Your Honor, as I  
9 said yesterday, we have had a lot of problems just getting  
10 people's depositions taken. And --

11 THE COURT: How many days do you think -- well, in  
12 your view you'll be ready to try the case sometime within  
13 about six months to nine months?

14 MR. WILSON: Actually I think I can be ready to try  
15 the case in three months, assuming that to use the vernacular,  
16 we don't get jerked around in taking depositions.

17 THE COURT: Okay.

18 MR. WILSON: Which we have been, and if you'd like  
19 to see the evidence on that I can show it to you.

20 THE COURT: Okay. Now what if this case were to go  
21 up on appeal from an order that I made? What would happen  
22 there? Would the bond be or would the amount expended in  
23 attorneys fees be greater or less than the amount that you  
24 visualize?

25 MR. WILSON: Well, if the case went up on an appeal,  
26 the appeal would probably be less than the fifty thousand  
27 dollars (\$50,000) for trial but it certainly wouldn't reduce  
28 the trial costs.



1 THE COURT: Okay.

2 MR. WILSON: And given the extensive record, I would  
3 imagine the briefing would be quite extensive.

4 THE COURT: What do you -- what else do you want to  
5 argue? You said you want to make some other arguments?

6 MR. WILSON: Well, I want to briefly cover a couple  
7 of points.

8 THE COURT: Go ahead.

9 MR. WILSON: First of all, the unclean hands  
10 argument that's been made. The major problem with that is  
11 that none of the conduct that they've alleged has any  
12 connection with what we're trying to enforce here. In the  
13 case of Carmen versus Athern, 77 Cal.App. 2d 585, holds that  
14 this kind of relief should not be denied because prior  
15 misconduct may indirectly effect the problem before the Court.  
16 In other words, Mr. Armstrong is trying to bring in everything  
17 that's happened in the last fifteen years and saying because  
18 of all this stuff, Scientology is bad, we have unclean hands,  
19 you can't enforce this agreement. And that is not what the  
20 law says.

21 It's also contrary to paragraph 7-I of the agreement  
22 which says that in litigation between Mr. Armstrong and the  
23 Church, neither party -- Mr. Armstrong is not going to use the  
24 evidence developed in the Aznaran -- the Armstrong case  
25 against the Church. And then in says, in other words quote,  
26 "The slate is wiped clean." So he's agreed basically that  
27 that conduct is not something that he's going to use.

28 Further, the only thing that Mr. Armstrong alleges

1 that we've done that really has anything to do with this  
2 particular action that he's taken is that we said some things  
3 about him that were said to refute declarations that he had  
4 given. And Mr. Heller's declaration, which is in evidence,  
5 says the reason we wanted to have the provisions be one way,  
6 that we could talk about Mr. Armstrong but he couldn't talk  
7 about us, was because there were all these declarations  
8 floating around that he'd given and we might -- we never knew  
9 when they were going to surface and we might have to refute  
10 them some day.

11           The collateral estoppel argument is based upon a  
12 misreading of the transcript of December 23 of 1991 in which  
13 Judge Geernaert clearly, on jurisdictional grounds, said that  
14 he did not have jurisdiction to enforce the agreement in the  
15 prior case. He made no factual findings and no legal  
16 findings. Collateral estoppel does not apply.

17           I don't believe that there is any evidence of duress  
18 in the record since you struck the long portions of Mr.  
19 Armstrong's declaration that talked about what he told Mr.  
20 Flynn and what Mr. Flynn told him. However, if there's any  
21 question in your mind about whether there was duress, the  
22 videotape which is before you which is in evidence shows there  
23 was none. If you get beyond that and assume there was duress,  
24 there's still severe problems with it because clearly, under  
25 Civil Code 1689(a)(1) duress has to be with the connivance of  
26 the party against who it's asserted. In other words, we had  
27 to be part of the duress, we had to know about it. And the  
28 videotape clearly shows we didn't. In fact, we were duped.

1 If Mr. Armstrong really was acting under duress he duped us  
2 into thinking that he wasn't.

3 THE COURT: How's that?

4 MR. WILSON: Because if you look at the videotape he  
5 clearly says "I'm not under duress." If you look at it, he's  
6 relaxed, he's happy, he's smiling, he's -- he doesn't look  
7 like he's acting under duress. There's no evidence that shows  
8 that this plaintiff had any knowledge of any duress or  
9 connived in it in any way.

10 Finally, even if you get past that, if there was  
11 duress that makes the contract voidable and not void. We  
12 discussed this in our brief. And when the contract is  
13 voidable or -- and not void, you can't accept benefits under  
14 it, you can't ratify it. Mr. Armstrong took the money and  
15 took the benefits under the contract. He didn't promptly to  
16 rescind.

17 Finally, it's part of the same argument, if you want  
18 to make -- if you want to void a contract because of duress,  
19 you can't void the whole -- part of it, you've got to void the  
20 whole thing; you've got to give back the money. And Mr.  
21 Armstrong hasn't done that.

22 THE COURT: What if he did? What if he said, here  
23 you can have the money back, I want to go out and do whatever  
24 I want?

25 MR. WILSON: Well, you mean would we accept it?

26 THE COURT: Yes.

27 MR. WILSON: Let me say this. I haven't discussed  
28 it with my clients; I wouldn't tell you what we'd do or what

1 we wouldn't do. I would say we have no obligation to do it  
2 and he at this point has no right to do it, and I seriously  
3 doubt he's going to do it. The argument's been made that this  
4 is not a contract that's specifically enforceable. We've  
5 discussed this in our brief.

6 One of the cases they rely on, the Thayer case,  
7 involves a dealership contract. What they're saying is, and  
8 they're right, you can't enforce a contract that has  
9 affirmative covenants. We don't -- this does not have  
10 affirmative covenants, these are negative covenants. The case  
11 they rely on, the Thayer case, that's a dealership case where  
12 the Court said, I'm not going to enforce this dealership  
13 contract between Chrysler and a Plymouth dealer. I'm not  
14 going to decide who's -- whether or not there's going to be  
15 cars that are sold, what prices you're going to maintain, and  
16 so forth. This is not that kind of contract.

17 THE COURT: Let's explore that in somewhat greater  
18 detail just for a moment.

19 MR. WILSON: Fine.

20 (Pause)

21 MR. WILSON: That would be, I think it's 526.

22 THE COURT: Yes.

23 MR. WILSON: 525 is the one that --

24 THE COURT: Yes, 526 second subdivision 5.

25 MR. WILSON: Correct. If I have that.

26 THE COURT: Is this a -- does this fall under that  
27 subsection?

28 MR. WILSON: No.

1 THE COURT: Why?

2 MR. WILSON: Because that subsection talks about  
3 contracts which would not be specifically enforced. And the  
4 cases that they've cited for that, in fact, I'm familiar with  
5 those cases and those are cases where you cannot enforce an  
6 affirmative covenant to do an act. The Thayer case that I was  
7 talking about.

8 THE COURT: Oh I see, that's what you're talking  
9 about. That's why you refer to that. I understand your  
10 argument.

11 MR. WILSON: Okay. That's it. As far as the  
12 collusive appeal argument. You looked at the provision  
13 yesterday. You saw how it was construed. At the time it was  
14 signed there was an appeal pending; it went forward. When  
15 that was over the plaintiff appealed again. Mr. Armstrong  
16 appeared. He appeared pro per, and he appeared through  
17 counsel, and he won. And all you need to do to know that is  
18 to look at the official cite of that decision which is 232  
19 Cal.App. 3d 1060, and I believe it's on page 1061 that Mr.  
20 Armstrong's appearance shows.

21 THE COURT: Does that conclude your argument?

22 MR. WILSON: That concludes it. I thank you for  
23 your patience.

24 THE COURT: Mr. Greene?

25 MR. GREENE: Good morning, Your Honor.

26 THE COURT: Go right ahead with your argument any  
27 time you're ready, sir.

28 MR. GREENE: Yes, sir.

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(Pause)

MR. GREENE: There are a number of infirmities that the agreement suffers from standing on its own. When one seeks to enforce the agreement in a court of equity and through the apparatus of an injunction for a specific performance, the infirmities that exist on its face increase.

In order for the plaintiff to be entitled to injunctive relief it has got to show that it is going to suffer irreparable harm and that the harm that it's going to suffer tips in its favor as opposed to the harm that the opposite party might suffer.

In this case, what's the harm of which Scientology complains? They complain that Armstrong has filed declarations under penalty of perjury in judicial proceedings that are ongoing. It raises the issue what is the purpose of litigation? The purpose of litigation is the ascertainment of the truth, and that is to be accomplished by the clash by the -- the disciplined clash of opposing viewpoints. The purpose of this --

THE COURT: That was all true before the December 1986 agreement, wasn't it? In other words, that's the way litigation worked even in 1985. Isn't that right?

MR. GREENE: Throughout our history that's how -- what litigant -- my understanding of what litigation has been.

THE COURT: So that must mean that the parties entered into the December 1986 agreement with that in their contemplation and the language of the December 1986 agreement must be for the purpose of prohibiting exactly that kind of

1 behavior; right?

2 MR. GREENE: Looking at it strictly from the  
3 perspective of the parties, yes. That does not take into  
4 consideration the higher interest and values of the public and  
5 of the judicial system. Yes, certainly that's correct with  
6 respect to the parties. The case, Fong versus Miller cited in  
7 our brief talks about illegal contracts and talks about the  
8 analysis that a Court has to make when presented with the  
9 question of whether or not a contract is void for illegality,  
10 and makes reference to the fact that there is a higher  
11 interest, and that is that the public whose welfare demands  
12 that certain transactions be discouraged.

13 As in this case. Any time there is a dispute  
14 between parties that centers around an illegal contract, the  
15 party that's bringing the case into court is complaining of  
16 being -- of the other side being unjustly enriched. And  
17 that's what happens, is happening here. But that's not what  
18 the -- the heart of the analysis that is most important  
19 addresses.

20 The analysis, what the analysis addresses is that  
21 the courthouse doors are closed ab initio to those who would  
22 seek to use judicial process to enforce something that is  
23 illegal.

24 THE COURT: Yes, but the question is, is the  
25 agreement illegal or unlawful?

26 MR. GREENE: That certainly is one of the questions.

27 THE COURT: And what's the answer to that question  
28 and --

1 MR. GREENE: Yes, it is.

2 THE COURT: -- why. Why?

3 MR. GREENE: The reason that it's illegal and  
4 unlawful is because in its various components it was designed  
5 and intended to suppress evidence that was adverse to  
6 Scientology, to suppress evidence in the proceeding that took  
7 place before Judge Breckenridge. Specifically, in Judge  
8 Breckenridge's opinion references --

9 THE COURT: You say it was designed to suppress  
10 evidence that came out in the case before Judge Breckenridge?

11 MR. GREENE: Indeed.

12 THE COURT: Okay. Would --

13 MR. GREENE: That is one of the -- one of its  
14 purposes.

15 THE COURT: Would they be, would some litigant who  
16 was interested -- sit down, counsel. Would some litigant who  
17 was interested in what happened before Judge Breckenridge be  
18 able to get the content of the proceedings before Judge  
19 Breckenridge?

20 MR. GREENE: No.

21 THE COURT: Why?

22 MR. GREENE: Because the file is sealed.

23 THE COURT: Wouldn't that order be itself subject to  
24 attack or an attempt to modify it?

25 MR. GREENE: Certainly, and that's what the  
26 Armstrong appellate decision in part was about.

27 THE COURT: But that doesn't have anything to do  
28 with Armstrong's preparing affidavits or declarations or



1 consulting with Mr. Yanny or doing any of the acts that Mr.  
2 Wilson catalogued here, does it?

3 MR. GREENE: No it doesn't. However, there are  
4 different values which are similar which apply to the  
5 situation of -- of providing declarations. And that's the  
6 civil --

7 THE COURT: Give me an example of what you're  
8 talking about.

9 MR. GREENE: Civil Code, Section 47 is a privilege  
10 to -- in judicial proceedings. In the very case that counsel  
11 cites, ITT Telecom, has a discussion of that on page 318,  
12 where the discussion is that the function of witnesses is of  
13 fundamental importance in the administration of justice.

14 THE COURT: But is there any inhibition on  
15 Armstrong's being a witness?

16 MR. GREENE: Yes, there is --

17 THE COURT: Where?

18 MR. GREENE: -- inhibition. At 7-H on page 10 of  
19 the settlement agreement.

20 THE COURT: I'm on that page.

21 MR. GREENE: Okay, the very tail end of the -- it  
22 starts off, "Plaintiff shall not make himself amenable to  
23 service of any such subpoena in a manner which invalidates the  
24 intent of this provision."

25 THE COURT: What's your point?

26 MR. GREENE: The point is is that the intent of this  
27 entire agreement if you take it in total and you look at the  
28 various provisions that apply to the appeal, that apply to the

1 Zolin case, that apply to the documents in the Armstrong case,  
2 the overall intent is to absolutely eliminate the knowledge  
3 possessed by Armstrong as expressed and found true in the  
4 Breckenridge decision from the face of the judicial birth.  
5 That's what the point --

6 THE COURT: How do you --

7 MR. GREENE: -- of this agreement is.

8 THE COURT: What's the foundation for that argument  
9 when measured against the following? Somebody simply says,  
10 look we think this man, Armstrong, is a treasure trove of  
11 information that may be pertinent to the subject matter of a  
12 case that we've got filed. They go to Armstrong and say,  
13 Armstrong we think you've got some information. Armstrong  
14 says, maybe I do maybe I don't but I've -- I'm not willing to  
15 discuss it with you short of legal compulsion to require me to  
16 do so. In straight terms, if you want my evidence, do what  
17 you have to do to compel the production of my evidence,  
18 otherwise I'm not going to talk with you about that topic at  
19 least. They say, okay fine, here's a subpoena, you're  
20 obligated to show up on such-and-such date at such-and-such a  
21 time for the taking of your deposition or for the testimony in  
22 court. He honors the subpoena as he's legally obligated to  
23 do. They ask him whatever questions they're going to ask him.  
24 Everything that he knows comes out. How is the contention  
25 that you just made subject to being reconciled with that?

26 MR. GREENE: One, were such a subpoena to be served  
27 it would immediately be the subject of a Scientology-generated  
28 motion to quash.

1 THE COURT: On what ground?

2 MR. GREENE: On the settlement agreement ground.  
3 It's happened. Part of the -- part of the record.

4 MR. WILSON: I'm going to object to that as not  
5 being part of the record. There's no evidence of that. It's  
6 never happened.

7 THE COURT: And --

8 MR. GREENE: That's -- I'm sorry. I direct the  
9 Court's attention to Roman Numeral I-CC --

10 THE COURT: But that's another case. If somebody  
11 tries to prevent Armstrong from testifying then they, based on  
12 the assertion that he's entered into an agreement not to  
13 testify, the content of the agreement is going to have to come  
14 up and he's, some judge is going to have to make a ruling;  
15 right?

16 MR. GREENE: Some judge will have to make a ruling.  
17 That's correct.

18 THE COURT: Okay.

19 MR. GREENE: And that's -- and that's -- but that's  
20 also assuming that Armstrong will honor the agreement, that  
21 Armstrong as an independent human being will say, you know, I  
22 will -- I will show up and testify as opposed to saying I know  
23 what's going to happen, I know what the kind of response is  
24 going to be through Scientology if I don't. And that's the  
25 part of the onerousness of this agreement, Your Honor, is that  
26 it can't be looked at in isolation. It's got to be looked at  
27 in its context.

28 And it's one of seventeen, according to what's in

1 evidence, and that includes individuals that did not have any  
2 litigation with Scientology that were simply witnesses and  
3 that were witnesses who were credited as being truthful by  
4 Judge Breckenridge, who were given money not to provide  
5 testimony in the future.

6 MR. WILSON: Your Honor, I object to that argument.  
7 There's no evidence of where they were witnesses or --

8 THE COURT: Let's --

9 MR. WILSON: -- that their testimony is credible.

10 MR. GREENE: I'll cite the --

11 THE COURT: But isn't there a distinction between  
12 giving testimony on the one hand and voluntary assistance on  
13 the other hand?

14 MR. GREENE: Well, yeah the distinction is money.  
15 The distinction is whether or not --

16 THE COURT: No, the distinction is not money in the  
17 context of the argument that you've made so far. The argument  
18 that you've made so far relies on the integrity of the  
19 judicial process and the integrity of the judicial process is  
20 one which is associated with compelling witnesses to attend  
21 and to give testimony. That's testimonial.

22 And what this agreement deals with is something  
23 related to but analytically separable from that, that is, the  
24 independent and voluntary giving of assistance or cooperation  
25 to persons who have interests adverse to Mr. Wilson's client,  
26 period. Go ahead.

27 MR. GREENE: One, the distinction is that in order  
28 to compel testimony and to be able to deal with law and motion

1 obstruction, it requires money. So it put the person who is a  
2 litigant and who is not financed by an insurance company at a  
3 distinct disadvantage. And it also has the same effect --

4 THE COURT: You don't represent any of those people,  
5 you just represent Armstrong.

6 MR. GREENE: That's correct. Right now that's  
7 right, I do represent Armstrong before this Court. To further  
8 answer your question, in the case of People versus Loaiasis,  
9 what the witness did in that case was to say that he would do  
10 everything in his power to avoid testifying. Certainly there  
11 is the compulsion that's attendant upon a subpoena. But that  
12 does not mean that an agreement to do everything in my power  
13 does not constitute an agreement to avoid attending a judicial  
14 proceeding.

15 And that's what the point is. That's the parallel.  
16 Is that as in Loaiasis -- and of course that's a criminal  
17 case; you know, the complaining party is not the plaintiff,  
18 the People of the State of California is the plaintiff. And  
19 that's what the holding was in Loaiasis. The witness signed  
20 an agreement to do everything in his power to avoid  
21 testifying. And of course in a criminal case the witness  
22 would be subject to the subpoena power of the Court. That did  
23 not dissuade the California Supreme Court from condemning the  
24 agreement in Loaiasis wherein the individual said that he'd do  
25 everything in his power to avoid testifying.

26 The Court may say, well there's a distinction here,  
27 there's a distinction between a criminal case and a civil  
28 case. I submit to the Court that based on the findings in

1 Judge Breckenridge's opinion that there is a criminal conduct  
2 that is involved in Armstrong's case. There was criminal  
3 conduct of which he has firsthand knowledge.

4 So the -- the point is is that when you look at the  
5 extremely broad provisions of the agreement that make it  
6 notice of what's prohibited, very very difficult on one hand.  
7 And you look at what the purpose of the agreement is on the  
8 other. Let me review it if I may for a moment.

9 We talked yesterday about the -- as Your Honor put  
10 it, whether or not Armstrong agreed to take a die on the  
11 appeal. The history is that Judge Breckenridge's decision was  
12 filed on June 22nd, 1984. On August 23rd there was a notice  
13 of appeal. Then on -- August 23rd, 1984 there was notice of  
14 appeal. Then on December 11, 1986 there's the dismissal of  
15 Armstrong's cross complaint.

16 At the same time there's a side agreement between  
17 Michael Flynn and the Scientology lawyers that agreed to limit  
18 any damages that Scientology could obtain were the case  
19 reversed on appeal to twenty-five thousand and one dollars  
20 (\$25,001). Additionally, there was an indemnification  
21 agreement whereby the Scientology lawyers agreed they would  
22 indemnify Flynn who in turn would indemnify Armstrong in the  
23 event that there was a retrial after a reversal on appeal  
24 wherein Scientology prevailed.

25 Then shortly thereafter, on December 18, 1986 the  
26 appeal was dismissed as premature, because the Court of  
27 Appeals said if there's a cross complaint it's not ripe for  
28 determination. Then on January 30th, 1987 there's the

1 unopposed motion to withdraw Judge Breckenridge's decision.  
2 Unopposed as it was it was denied on February 2nd, 1987 by  
3 Judge Breckenridge. Then on February 9, 1987 there's the  
4 second notice of appeal.

5 At that point the provisions kick in and Armstrong  
6 is by the terms of the agreement set forth in paragraph 4-B  
7 prohibits --

8 THE COURT: Hang on; 4-B?

9 MR. GREENE: Yes.

10 THE COURT: Just a second. I've got it. Yes.

11 MR. GREENE: Okay.

12 THE COURT: Yes. Go ahead.

13 MR. GREENE: He's prohibited from opposing it.

14 That's collusive. And I submit to the Court that that  
15 collusion, that domination of both sides of litigation in  
16 order to be -- to get a pre-intended result is evidence of  
17 what the overall intent of this agreement is. Not only with  
18 respect -- I mean, not with respect to Armstrong's litigation  
19 because it was completed, but with respect to litigation that  
20 Scientology was involved in otherwise. Because anybody who  
21 reads Breckenridge's decision can't help but note it's one of  
22 the most scathing condemnations that I've ever read that's  
23 been written by a judge. And Judge Breckenridge is a -- he's  
24 a very well respected judge. Current edition of CALJIC is  
25 dedicated to him.

26 So when you take the matter of setting of the  
27 collusive appeal where Scientology can engineer the  
28 elimination of the Breckenridge decision, when you take Judge

1 Breckenridge crediting of Armstrong and the witnesses in the  
2 protracted litigation in front of him as being credible, and  
3 when you take Judge Breckenridge's condemnation of Scientology  
4 as -- as -- of L. Ron Hubbard being a pathological liar, of  
5 Scientology being a schizophrenic organization that  
6 systematically abuses the civil rights of its members, where  
7 findings were made about the wholesale destruction of  
8 documents in anticipation --

9 MR. WILSON: I object to this, Your Honor.

10 MR. GREENE: -- of raids by the FBI --

11 MR. WILSON: This is --

12 THE COURT: Just a second. What's your objection?

13 MR. WILSON: It's not in the record.

14 THE COURT: The Breckenridge --

15 MR. GREENE: I'll cite the judge.

16 THE COURT: The Breckenridge decision is in the  
17 record. That's what he's talking about. Go ahead with your  
18 argument. To the extent that anything that he says deviates  
19 from the strict text of the Breckenridge decision I'll  
20 disregard it.

21 MR. GREENE: Certainly. And I'm not deviating.

22 THE COURT: Go ahead. What's the purpose of it  
23 though? That wasn't what you told us all that you were going  
24 to use the Breckenridge decision for. You're not expecting to  
25 adopt, for example, his -- his findings as though they were  
26 proven in this case, are you?

27 MR. GREENE: It's collateral estoppel. The parties,  
28 Armstrong and -- and Scientology are the same here as they



1 were there. And so this Court is able to look to the decision  
2 of Judge Breckenridge in that regard. Yes.

3 THE COURT: All right.

4 MR. WILSON: Your Honor, my understanding of your  
5 ruling when you admitted the Breckenridge decision is that it  
6 was for background.

7 MR. GREENE: Oh, this is background.

8 THE COURT: I think you better circumscribe your  
9 argument on this point, Mr. Greene. I don't think it's likely  
10 to be very helpful in the decision process.

11 MR. GREENE: Further is the -- are the provisions  
12 that in the settlement agreement that apply to the case of  
13 United States versus Zolin, that involve --

14 THE COURT: What did -- which settlement, which case  
15 did the agreement settle? Was it case 420153?

16 MR. GREENE: The cross complaint in that case, yes.

17 THE COURT: 420153?

18 MR. GREENE: Yes.

19 THE COURT: Okay.

20 MR. GREENE: Part of Armstrong's obligation pursuant  
21 to the settlement agreement were also to help Scientology  
22 retrieve documents that were part of litigation in United  
23 States versus Zolin. United States versus Zolin is a matter  
24 where ultimately there was a finding that Scientology's  
25 assertion of the attorney-client privilege should be set aside  
26 because of Evidence Code, Section I believe it's 956, the  
27 prime fraud exception.

28 And so when you take that, when you take -- when you

1 put all of these matters together, when you put them together  
2 and in addition you look at Armstrong's obligation to avoid  
3 service of process and you can -- not amenable to service of  
4 process is susceptible of saying you should not be -- you  
5 should avoid service of process.

6 Judge Geernaert, when he reviewed this agreement  
7 asked a question on the record, on page 22 of the transcript  
8 of his proceedings that took place on December 23rd, 1991,  
9 said what according to this agreement, what if a process  
10 server comes up to Armstrong in a restaurant? What is he  
11 supposed to do? Jump up and run away? What's required to  
12 comply with this agreement?

13 THE COURT: What's your theory? What is required to  
14 comply?

15 MR. GREENE: What is he required to do?

16 THE COURT: Yes.

17 MR. GREENE: According to the spirit of this  
18 agreement he is required to avoid service of process at all  
19 costs. He is required, he knows that if some lawyer wants to  
20 subpoena him and take testimony from him he should run. He  
21 should be on the lookout and he should evade service of  
22 process. That's what our position is with respect to that.

23 So the harm that Scientology complains of is that  
24 there is going to be testimony that if pursuant to subpoena  
25 would come out anyway, then -- Scientology complains that  
26 there are people in litigation that -- against it, would have  
27 -- they -- Scientology complains that they would have access  
28 to Armstrong as a witness. That's what the complaint is.

1 That's what the harm is.

2           What's the harm as to Armstrong? As to Armstrong  
3 there -- the -- the -- one of the harms is the complete  
4 suppression of his First Amendment right to free speech. Were  
5 this Court to issue an injunction without any question that  
6 would fall within the definition of being a prior restraint.  
7 A prior restraint on the right to free speech, even for a day,  
8 constitutes irreparable injury.

9           THE COURT: What was the -- what if a person said --  
10 well let's do it a little differently. Your theory then is  
11 that all confidentiality agreements are subject to  
12 invalidation because they are inhibitions on free speech. Is  
13 that it?

14           MR. GREENE: No, it's not as broad as that.

15           THE COURT: Doesn't that have to be your point?

16           MR. GREENE: Can I make the free speech argument  
17 without --

18           THE COURT: Sure.

19           MR. GREENE: -- taking that position?

20           THE COURT: Sure. Let's see, I don't know whether  
21 you can plausibly but --

22           MR. GREENE: Right.

23           THE COURT: -- go ahead and --

24           MR. GREENE: And that's what your question is.

25           THE COURT: -- and make it, and let's see how it  
26 goes.

27           MR. GREENE: Okay. Candidly, yes. I would say that  
28 based on the free speech argument, if any -- any settlement

1 agreement constrained free speech without a counterbalance,  
2 that would be true. The distinction is, what's -- what's the  
3 other interest? What's the interest that -- that balances  
4 against Armstrong's free speech right?

5           Here we have the public interest in truthful  
6 litigation proceedings. The case that the plaintiff has  
7 cited, the ITT Telecom Products case, that is a trade secret  
8 case that involved an employee agreement whereby the  
9 individual was not supposed to disclose trade secrets which  
10 have been recognized as a constitutionally protected  
11 intangible property interest. So that there is a -- there's a  
12 concrete balance.

13           And so then by -- may I anticipate what the logical  
14 question would be? I think you'd ask me, well Mr. Greene,  
15 didn't -- isn't that what Scientology bought here? Didn't --  
16 didn't -- isn't this what they purchased? And my answer is,  
17 you can't buy it. What Scientology purchased was the  
18 settlement of a cross complaint where they stood to lose a  
19 very substantial amount of money. And that was what they  
20 purchased.

21           What also was involved are all of these provisions  
22 which are void as a matter of public policy, which are void as  
23 a matter of constitutional interpretation as being  
24 impermissively over-broad and vague. And that should be  
25 severed from the agreement because they are illegal.

26           The Wakefield case you covered pretty well except  
27 what you did not state on the record was that Marjorie  
28 Wakefield was not even a litigant in that case. That case was

1 simply an appeal by a newspaper organization of a -- of a  
2 decision of the trial court saying you cannot -- you cannot  
3 enter into contempt proceedings because Wakefield has  
4 disclosed what she was not supposed to disclose that were held  
5 in secret. That's what -- that's what that determination  
6 stands for.

7           And you read Wakefield and Wakefield discusses that  
8 -- that there was a preliminary injunction. And I know this  
9 because for a while I represented Marjorie Wakefield. There's  
10 a preliminary injunction where Marjorie Wakefield was not even  
11 represented by counsel. And that was also in a secret  
12 proceeding.

13           MR. WILSON: Your Honor, objection; that's not in  
14 the record.

15           MR. GREENE: Yes, it is. It's in my declaration  
16 that's in evidence.

17           THE COURT: Let's just go ahead, can we? I'm not  
18 much interested in more discussion of the Wakefield case. It  
19 doesn't seem to me that that's likely to be fruitful. I think  
20 what you really have to do is to focus your argument on what  
21 principal reason exists for the invalidation of the  
22 contractual provisions that are involved in this case.

23           MR. GREENE: Okay. The principal reasons are these.  
24 One, that what we have here is a compromise of litigation that  
25 includes provisions that are designed to conceal facts from  
26 the Court and from courts in the future. It is our position  
27 that we should not even be here before Your Honor because  
28 pursuant to paragraph 20 of this agreement, jurisdiction was

1 retained to enforce it by Judge Breckenridge. Scientology  
2 sought last fall to do just that, relying on that provision.  
3 Scientology lost --

4 THE COURT: Well, but your client took a position in  
5 that order, in that -- you're talking about the proceeding  
6 before Judge Geernaert?

7 MR. GREENE: Yes.

8 THE COURT: I thought your client took the position  
9 before Judge Geernaert and Judge Geernaert agreed that, pardon  
10 me, that jurisdiction had not been retained or reserved.

11 MR. GREENE: No, that's not quite -- the position  
12 was that because Judge Breckenridge, on December 12th ordered  
13 that the settlement agreement be filed and that it never was  
14 filed, that for Scientology to seek to enforce the agreement  
15 as though it had been made a judgment or order of the Court  
16 conferred no jurisdiction on the Court. And that's precisely  
17 --

18 THE COURT: So what should have happened? How would  
19 the plaintiff try to enforce this agreement?

20 MR. GREENE: The way that they should have -- they  
21 had the opportunity. Judge Geernaert said to them, would I  
22 need to make this enforceable is an evidentiary hearing. And  
23 the plaintiff declined and said, well we don't want an  
24 evidentiary hearing. And so they had their opportunity. They  
25 had their bite of the apple and they blew it. And now they  
26 want to come back again and have another bite.

27 Our position is that when Judge Geernaert made his  
28 determination that there wasn't any order, that he made

1 certain factual findings necessary to that. On page 52 of the  
2 transcript he says, "So my belief is Judge Breckenridge, being  
3 a very careful judge, follows about the same practice."

4           And if he had been presented with that whole  
5 agreement and if he had been asked to order its performance he  
6 would have dug his feet in because that is one of the I have  
7 seen -- I can't say, I'll say one of the most ambiguous, one-  
8 sided agreements I've ever read. And I would not have ordered  
9 the enforcement of hardly any of the terms had I been asked to  
10 even on threat of, okay, the case is not settled. I know we  
11 like to settle cases but we don't want to settle cases and in  
12 effect prostrate the court system into making an order which  
13 is not fair or in the public interest.

14           THE COURT: Incidentally, I would counsel both sides  
15 if this case goes beyond this stage, not to try to agree to  
16 any settlement. I think you should just go ahead and try your  
17 lawsuit if you've got any lawsuit left. Let the case be  
18 resolved by judgment rather than by settlement. I don't think  
19 that anybody's interests are served by settlement. One side  
20 takes the position that the settlement agreement has  
21 essentially no meaning in that it was -- that its provisions,  
22 substantially repeated and re-repeated and re-repeated, are  
23 unenforceable.

24           And the other side takes the position -- that's the  
25 defense position. The plaintiff's position is that the  
26 purpose of the agreement is different from that purpose that  
27 the defendant contends. I think under those circumstances you  
28 have some substantial difficulty in dealing with agreements

1 and dealing with each other. And if the case were my case I  
2 would most probably go ahead and try the case and not try to  
3 engage in settlement. Go ahead.

4 MR. GREENE: Additionally, going to the question of  
5 irreparable injury is the fact that in the agreement provision  
6 is made for liquidated damages. The parties in advance looked  
7 at the possibility that there would be some kind of violation  
8 and provided for that in advance. And therefore, there's an  
9 adequate legal remedy which would take the case out of being  
10 appropriate for injunctive enforcement.

11 THE COURT: Do I have to make a determination  
12 concerning, pardon me, the adequacy of the liquidated damage  
13 remedy?

14 MR. GREENE: No.

15 THE COURT: Why?

16 MR. GREENE: Because one, that's not before the  
17 Court. Whether or not the liquidated damages provision is  
18 adequate is a determination for the trial court. The fact  
19 that there is a provision for liquidated damages on its face  
20 provides the relief that is appropriate in this case.

21 Now again, I mean it's -- it goes -- that takes your  
22 argument earlier of the parties charting what's going to  
23 happen. I mean they made that determination. They made that  
24 agreement and said okay, if this is what -- if there's a  
25 violation this is what a remedy for that violation is going to  
26 be.

27 THE COURT: Well, how do I handle it then? Am I  
28 supposed to -- am I not supposed to -- am I not supposed to



1 adjudicate or make a determination about whether non-equitable  
2 remedies are adequate?

3 MR. GREENE: Well, by --

4 THE COURT: There is --

5 MR. GREENE: -- its existence, yeah, you make -- you  
6 make the -- you say, yes there is an adequate remedy here  
7 because there is -- there is the liquidated damages provision.  
8 That is the same --

9 THE COURT: Well, I have to make a determination  
10 about whether that liquidated damages provision is adequate.

11 MR. GREENE: No, because the parties have determined  
12 that in advance. And there's also --

13 THE COURT: What makes you say that? Let's go to  
14 the language of the agreement.

15 MR. GREENE: We're looking at page 8 at the top of  
16 the agreement.

17 THE COURT: Hang on for just a second. Okay.

18 (Pause)

19 THE COURT: What do you contend that that section  
20 does? You're talking about this material -- it's in the tag  
21 end of paragraph of -- this is 7-D, isn't it Mr. Greene?

22 MR. GREENE: Right. Yes, it is.

23 THE COURT: Okay. You contend that this liquidated  
24 damage provision does -- has what effect then on my  
25 responsibilities and on the rights of your client?

26 MR. GREENE: The effect that it has is to provide an  
27 adequate legal remedy which would obviate the need for  
28 injunctive relief.

1           THE COURT: But the question I had asked you was  
2 whether or not I have to make an independent determination  
3 about whether the amount of money referred to here is  
4 adequate. And your statement was, no you don't, the parties  
5 have agreed that it is adequate. And I wanted to get to this  
6 section of the agreement so that I could find what language or  
7 construction of the agreement you look to for support of that  
8 latter assertion.

9           MR. GREENE: Well, the language -- it's a -- its own  
10 language. That releasees would be entitled to liquidated  
11 damages in the amount of fifty thousand dollars (\$50,000) for  
12 each such breech. And fifty thousand dollars (\$50,000) I  
13 think on its face quite adequate to deal with the violations  
14 that are complained of here.

15           THE COURT: Do I have to make that determination  
16 about whether it is adequate? In other words, are you  
17 changing your position? Because you now said, quote "I think  
18 on its face --

19           MR. GREENE: Right.

20           THE COURT: -- fifty thousand dollars (\$50,000) is  
21 adequate," end quote more or less.

22           MR. GREENE: Well. The reason --

23           THE COURT: I want to know whether you're changing  
24 your position from the earlier position which is if the  
25 agreement constitutes an explicit acknowledgement that this is  
26 an adequate --

27           MR. GREENE: Going down further, to answer you  
28 directly, the language is the amount -- at the end of

1 paragraph D, the last two sentences.

2 THE COURT: All right.

3 MR. GREENE: The amount of liquidated damages herein  
4 is an estimate of the damages that each party would suffer in  
5 the event that this agreement is breached.

6 THE COURT: All right.

7 MR. GREENE: The reasonableness of the amount of  
8 such damages are hereto acknowledged by plaintiff.

9 THE COURT: Plaintiff is your client?

10 MR. GREENE: Right.

11 THE COURT: And what --

12 MR. GREENE: And so that's -- that -- that's -- my  
13 answer is that the parties have made the determination between  
14 themselves that yes --

15 THE COURT: Okay. Go ahead.

16 MR. GREENE: And Scientology drew up this agreement;  
17 Armstrong didn't draw up the agreement.

18 (Pause)

19 THE COURT: Any other arguments?

20 MR. GREENE: Yes. Also going to the issue of the  
21 irreparability of any harm is the delay. The violations of  
22 which Scientology complains commenced in June 1991. No effort  
23 at seeking any kind of relief occurred until October, almost  
24 six months later. If it's -- if the harm is so bad and -- and  
25 is of such tremendous import, the assertion of that is  
26 undermined by the delay attendant upon the effort made to seek  
27 relief.

28 (Pause)

1 MR. GREENE: The requirement restricting Armstrong's  
2 employment, that only has any type of judicial imprimatur in  
3 non-competition agreements. All such agreements are  
4 circumscribed as to geography, as to time. None such  
5 agreements are enforceable on a completely open-ended basis as  
6 here. So that is an additional harm which would be suffered  
7 by Armstrong in the event that the Court were to issue  
8 injunctive relief.

9 THE COURT: Well, do I have any evidence at all that  
10 would show me what the gravity of the potential harm is?

11 MR. GREENE: Not -- not aside from precluding  
12 Armstrong from exercising his protected right.

13 THE COURT: To what?

14 MR. GREENE: Employment one, free speech two,  
15 freedom of association three. And that -- those are specific  
16 to Armstrong and do not incorporate the public interest issues  
17 which we contend are paramount and stand above and are more  
18 important than the interests of the parties here. That's  
19 really the point, because what we have is not like in the  
20 Hoffman case which is a federal case that counsel cited  
21 involving the resolution of some litigation before the EEOC.

22 This is not EEOC litigation, this is litigation  
23 involving an organization that's been judicially found to  
24 systematically involve itself in heinous acts. And somebody  
25 who has a tremendous amount of first-hand information with  
26 respect to those, one. And then too, part of a larger scheme  
27 and effort to subject all individuals who share Armstrong's  
28 firsthand knowledge from being able to provide that knowledge,

1 to whit the agreements that were submitted in support of  
2 Scientology's efforts to preliminarily enjoin the Aznarans  
3 which are in evidence. To whit the enumeration of individuals  
4 on the settlement agreement that Armstrong's name is on.  
5 That's not the one that is the basis of the sought-for relief  
6 here but is the other settlement agreement that is in  
7 evidence. And that's the one that enumerates some seventeen  
8 people, including people who did not have any lawsuits.

9 THE COURT: Okay.

10 MR. GREENE: Those that did not have lawsuits  
11 included Laurel Sullivan, Nancy Dincalci and Kima Douglas.  
12 Each one of those witnesses was judicially credited as being  
13 believable by Judge Breckenridge.

14 THE COURT: So what?

15 MR. GREENE: So it goes to show what is happening.  
16 It goes to show what the point of the plaintiff's exercise in  
17 creating these agreements was. It was to eliminate witnesses.  
18 It was to suppress evidence and ultimately to obstruct  
19 justice. Somebody -- people are going to always have to be  
20 legally required to honor subpoenas. So it doesn't really  
21 matter whether somebody can be subpoenaed or not.

22 THE COURT: Why?

23 MR. GREENE: The point -- the reason why is because  
24 the point is is that the individual is being asked, Armstrong  
25 here, is being asked to not provide any testimony, to do  
26 everything in his power as in Loaiasis to avoid providing  
27 testimony. So it's really a --

28 THE COURT: It's different from Loaiasis. Loaiasis

1 was really a testimonial case. This case is a cooperation  
2 case. Isn't that the way you see the text of the agreement?

3 MR. GREENE: This is a cooperation case?

4 THE COURT: Yes.

5 MR. GREENE: No, the -- this isn't a -- the -- part  
6 of the -- the lion's share of the evidence that's been pointed  
7 to by the plaintiffs are declarations. That's evidence.

8 THE COURT: None of it though was testimonially  
9 compelled. All of it was volunteered.

10 MR. GREENE: It still could have been compelled. I  
11 mean, the Yanny litigation --

12 THE COURT: But that's a different case.

13 MR. GREENE: -- is a good example.

14 THE COURT: That's a different case, is it not?

15 MR. GREENE: To some extent, yes.

16 THE COURT: So it's one thing to compel testimony  
17 and have a witness testify; it's another thing to have  
18 somebody volunteer information and as appears I think  
19 reasonably persuasively from the text and format of the  
20 declarations, himself draft a declaration.

21 MR. GREENE: Certainly can't argue that. He  
22 certainly did draft that one declaration, that's -- that's in  
23 long hand.

24 THE COURT: There's a face page put on it but the  
25 drafting of it --

26 MR. GREENE: But the declaration --

27 THE COURT: -- was done by the --

28 MR. GREENE: -- is in long hand. That's correct.

1 THE COURT: And I'm talking about --

2 MR. GREENE: There's no question.

3 THE COURT: And I'm talking about another typed  
4 declaration too. The declaration is typed apparently by Mr.  
5 Armstrong himself on his own typewriter. It appears to be the  
6 same typewriter that the letter to Lieberman was written on.

7 MR. GREENE: The dot matrix printer.

8 THE COURT: Yes. And you and I are in agreement  
9 that he drafted that himself voluntarily and spontaneously.

10 MR. GREENE: The Lieberman letter and the  
11 declaration that had type identical to that, yes.

12 THE COURT: All right. Is there a difference in  
13 principal between testifying on the one hand and doing those  
14 things on the other?

15 MR. GREENE: No.

16 THE COURT: Why?

17 MR. GREENE: The end result is the same. The end  
18 result is sworn testimony in a proceeding that's designed to  
19 find out what's true.

20 THE COURT: Okay. Any other arguments?

21 MR. GREENE: Yes.

22 THE COURT: Proceed.

23 MR. GREENE: Just a further example of the  
24 suppression of evidence question has to do with the lawsuit  
25 that involved information that Armstrong knew that it was out  
26 of state. The point is that the money that it takes to  
27 litigate is horrendous. And if the litigant has money to burn  
28 then that person is not so likely to be harmed by this

1 agreement and those like it as is someone who has the  
2 resources. But even then there's no guarantee. In the Yanny  
3 case Judge Cardenas said, Yanny you are not enjoined from  
4 looking to Armstrong to help defend yourself in the lawsuit  
5 that Scientology has brought against you.

6 Scientology goes and --

7 THE COURT: What was the date of that? Let's take a  
8 look at --

9 MR. GREENE: I believe that's --

10 THE COURT: -- exactly what Judge Cardenas  
11 determined.

12 MR. GREENE: -- August 6th, 1991.

13 THE COURT: Let's find that and let's just see what  
14 exactly Judge Cardenas did.

15 (Counsel Colloquy)

16 THE COURT: Just make your reference to any -- to  
17 wherever in the record you contend that exists, Mr. Greene.  
18 Let's study it together.

19 MR. GREENE: I was conferring. I'm sorry, Your  
20 Honor. You want me to direct the Court to where we -- to  
21 where it is, right?

22 THE COURT: Right.

23 MR. GREENE: Just a moment.

24 (Counsel Colloquy)

25 MR. GREENE: That would be, I believe, item no. 5 of  
26 plaintiff's evidence.

27 THE COURT: Okay, just a second.

28 MR. GREENE: Which was, I believe, Exhibit 1-E to



1 plaintiff's request for judicial notice.

2 THE COURT: Well, it is in the record before me now?

3 MR. GREENE: Yes.

4 THE COURT: If so, which of the items that plaintiff  
5 introduced was it?

6 MR. GREENE: I believe it was no. 5, the fifth one.

7 THE COURT: The transcript of Religious Technology  
8 versus Yanny?

9 MR. GREENE: That's the one.

10 THE COURT: Okay. Just a second.

11 (Pause)

12 MR. WILSON: Your Honor, that's only a partial  
13 transcript. Sorry for interrupting.

14 THE COURT: You introduced it. He's making use of  
15 it.

16 MR. WILSON: Yes, I know and I -- we introduced it  
17 only for one purpose. I think that you did introduce the full  
18 transcript somewhere.

19 THE COURT: Tell me where it is.

20 MR. WILSON: I can give you the cite, Your Honor.

21 THE COURT: All right.

22 MR. WILSON: It's Declaration of Graham E. Berry --

23 THE COURT: Is that in the record? I'm not going to  
24 refer to anything that's not in the record.

25 MR. WILSON: I think -- I can't tell you that, Your  
26 Honor.

27 THE COURT: Martha?

28 THE CLERK: No, that was not.

1 THE COURT: I think Mr. Greene has the right to  
2 refer to items in the record. Mr. Greene, make your  
3 reference. Tell me --

4 MR. GREENE: Yes. Again --

5 THE COURT: -- exactly where --

6 MR. GREENE: -- as my notes reflect from yesterday,  
7 it was item 5.

8 THE COURT: All right. So that went along with the  
9 request for judicial notice of the other side, right?

10 MR. GREENE: Yes. And also --

11 THE COURT: Just a second. What was the date of the  
12 filing of the request for judicial notice?

13 MR. WILSON: May 7th, '92.

14 THE COURT: Okay.

15 MR. WILSON: The cover sheet says Evidence Submitted  
16 in Support of Plaintiff's Amended Motion for Preliminary  
17 Injunction.

18 THE COURT: All right, thank you.

19 (Pause)

20 THE COURT: How much more argument do you have?

21 MR. GREENE: Ten or fifteen minutes.

22 THE COURT: Oh, I think you better reduce it  
23 somewhat.

24 MR. GREENE: Okay. I mean, I just --

25 THE COURT: I'll tell you what. I'll give you  
26 another ten minutes from now.

27 MR. GREENE: While we're looking?

28 THE COURT: Unless you can -- if you want to refer

1 to a piece of evidence, unless you can bring it to my hand I  
2 think what I have to do is take the time necessary to find it  
3 so that I can make a determination about whether what you're  
4 saying coheres with the content of the evidence. You just  
5 govern yourself accordingly.

6 MR. GREENE: All right.

7 THE COURT: Or if you want to shortcut things, you  
8 hand it to me.

9 MR. GREENE: Well, I would like to hand it to you.  
10 I don't have it in front of me.

11 THE COURT: That's entirely up to you then.

12 MR. GREENE: I have my notes so that I'm --

13 THE COURT: Yes, you can organize --

14 MR. GREENE: I wish I could but I can't.

15 THE COURT: You can organize your presentation any  
16 way you want.

17 MR. GREENE: What I can do and Your Honor can check  
18 if I'm accurate or not, it's just -- is simply quote you --

19 THE COURT: All right, I've got it I think. I have  
20 it. I've got it.

21 MR. GREENE: Okay. Page 5.

22 THE COURT: Page 5 of the transcript?

23 MR. GREENE: Yes, sir.

24 THE COURT: Well, I've only got one page here. Am I  
25 looking at the wrong document? What I'm looking at is Exhibit  
26 1-D, the Request for Judicial -- 1-E, the Request for Judicial  
27 Notice. Let me just see. No, that's not what I'm looking at.  
28 Actually, I'm looking at a single page.

1 MR. WILSON: That's all we submitted, Your Honor.

2 MR. GREENE: Judge I just -- just for the record,  
3 yesterday counsel said that we were -- that were -- that we  
4 want to submit transcript of the proceeding before Judge  
5 Cardenas.

6 THE COURT: No, he said he was making reference to  
7 Exhibit 1-E to the Request for Judicial Notice of Plaintiff,  
8 transcript of Religious Technology versus Yanny, August 1991.  
9 The Exhibit 1-E that I'm looking at is Exhibit 1-E to a  
10 different document; it's Exhibit 1-E to something called  
11 Evidence Submitted in Support of Plaintiff's Amended Motion  
12 for Preliminary Injunction. That was filed on May 7th, 1992.  
13 Please, somebody hand up to me Exhibit 1-E to the Request for  
14 Judicial Notice of plaintiff.

15 MR. WILSON: It is the same, Your Honor; I'll hand  
16 it up to you.

17 THE COURT: All right. Show it to Mr. Greene and  
18 then hand it up.

19 MR. GREENE: Well, it looks like, Judge, there's no  
20 point in wasting your time and my argument time. I simply  
21 made a mistake in assuming incorrectly apparently that when  
22 counsel said the transcript of the Cardenas proceeding on  
23 August 6th, that it was the entire transcript.

24 THE COURT: Okay. It just seems to be this one page  
25 which --

26 MR. GREENE: And the citation --

27 THE COURT: -- as far as I can tell is --

28 MR. GREENE: -- just is on page 5, line 28 through

1 page 6, line 3.

2 THE COURT: Go ahead with your argument then, Mr.  
3 Greene.

4 MR. GREENE: All right. This case -- another point,  
5 I want to address some of the points made by counsel. The  
6 Maclean case is not any cited case. That's a slip opinion,  
7 it's not a published opinion, it's not anything upon which  
8 this Court can rely. The ITT case is a case that involves  
9 trade secrets in a property interest protected and  
10 traditionally protected by trade secrets. There is no  
11 traditional protection for civil and criminal wrongs to be  
12 covered up and hidden by settlement agreements. And so I  
13 would submit to you that the precedential value of the ITT  
14 case is extremely limited.

15 That case also relies on a case cited by counsel but  
16 not discussed, In Re Steinberg that involved a movie-maker who  
17 made apparently an agreement with a juvenile court judge to  
18 make a movie of some kind of program that the Court used or  
19 that the Court sponsored or ordered juveniles to participate  
20 in and publish it. And then when it -- and the Court in the  
21 exercise of its care for the minors said, okay fine, I'll let  
22 you do it, but you've got to clear it with me first. And that  
23 was the agreement between the Court and the movie-maker. And  
24 then the movie-maker apparently didn't -- either didn't like  
25 what the judge wanted to restrict him to or just wanted to  
26 disregard it and said, no this is not -- I do not want to  
27 honor that.

28 What you have there and you don't have here is a

1 judicial order. It does not exist in this case. And that's  
2 why there is the value that -- that balances against -- that's  
3 the value in that case that balances against the claimed first  
4 amendment exercise.

5           The breadth of the language that the plaintiffs want  
6 to enforce is way too much. Counsel says, Judge follow Judge  
7 Dufficy's order. Look at Judge Dufficy's order and you follow  
8 -- and that tracks the language of the agreement. And so it's  
9 the language of the agreement that the plaintiff is asking  
10 this Court to incorporate into a court order.

11           There are a number of flaws that I submit are fatal.  
12 For example, paragraph 7-E at page 8 requires that Armstrong  
13 return all documents which in the future may come into his  
14 hands quote "to find in Exhibit A." Well, there is --

15           THE COURT: Is there evidence that this provision is  
16 being violated?

17           MR. GREENE: I do not believe that any has been  
18 submitted although there may be a -- a -- that's not being  
19 claimed although I believe that one of Armstrong's  
20 declarations in the Aznarans case attached a document that may  
21 fall within whatever the scope of Exhibit A is.

22           THE COURT: Okay.

23           MR. GREENE: Here -- there's no Exhibit A though.  
24 That's the point. It's this -- you know --

25           MR. WILSON: If I might interrupt. There's no  
26 violation of this that's claimed.

27           THE COURT: All right, go ahead Mr. Greene. I think  
28 maybe we might want to devote some attention to some other

1 points.

2 MR. GREENE: Paragraph 7-G at page 10. Armstrong  
3 will not voluntarily assist or cooperate with any person  
4 adverse to Scientology. The question is, when is somebody  
5 adverse to Scientology? Counsel says to you, we need this  
6 kind of broad language so that it can be enforced. But the  
7 very reason why counsel says they need the language is why the  
8 Court can't use it, because in issuing injunctive orders  
9 they've got to be -- the order, particularly when it's  
10 addressing First Amendment rights has got to be narrowly  
11 circumscribed.

12 And having some broad language about Armstrong not  
13 assisting or cooperating with somebody adverse to Scientology  
14 -- when is a person adverse to Scientology? Is somebody who  
15 would -- who would ask a lawyer for assistance in obtaining a  
16 court order in a family law proceeding preventing a minor  
17 child from being introduced to Scientology, Scientology is not  
18 a party. Is that a situation where somebody is adverse to  
19 Scientology? You can't tell. And that's what the problem is  
20 with the agreement is that it's -- it's too broad.

21 THE COURT: Well, is that one of the contentions  
22 that Mr. Armstrong makes, that he wants to engage in this kind  
23 of -- kind of guardian of morals, generalized guardian of  
24 morals capacity? That he wants to go out and help people in  
25 family law matters? Sort of hovers around and does things  
26 like that or is it --

27 MR. GREENE: He doesn't have to. It's not -- it's  
28 not incumbent upon him in these proceedings to foresee --

1 THE COURT: Well, it's incumbent upon me to balance  
2 the -- to balance the hardships. And if hardships are going  
3 to be referred to hypothetically, I don't know whether they're  
4 actual, concrete threatened hardships or whether they are  
5 hardships that simply exist in the ingenuity of a lawyer's  
6 mind.

7 MR. GREENE: No.

8 THE COURT: The ingenuity of a lawyer's mind is  
9 impressive and I don't mean to deprecate it. But I have to  
10 deal with it in a way that's qualitatively different than the  
11 way I deal with an attack on the interests of parties as  
12 manifested by their behavior or -- or more or less proximately  
13 intended behavior.

14 MR. GREENE: It's not in ingenious hypothetical.

15 THE COURT: Why not?

16 MR. GREENE: Gerry Armstrong works for me. I've  
17 represented people --

18 THE COURT: Worked for you in what capacity?

19 MR. GREENE: He works for me. I'm Ford Greene and  
20 my declaration is in evidence before you in this matter.

21 THE COURT: Works for you in what capacity? I think  
22 I need --

23 MR. GREENE: He --

24 THE COURT: -- to ask that again.

25 MR. GREENE: -- staples, he stamps, he copies, he  
26 records mail, he addresses envelopes.

27 THE COURT: I thought you were describing a  
28 situation in which Armstrong would be an advisor to people in



1 family law matters concerning the affairs of the plaintiff.

2 MR. GREENE: I am proposing that as an example of  
3 what he could do. Okay? Right now, I mean, the family law  
4 case where I was -- that my hypothetical is in reality based  
5 on pre-dated Armstrong's employment by me. It doesn't mean to  
6 say that -- that I wouldn't be asked to do something in the  
7 future. And if Gerry Armstrong knows the information about  
8 how children are treated in Scientology I would ask him,  
9 unless I was otherwise prohibited from doing so.

10 THE COURT: What credence should I give to the  
11 assertion that's contained, or is there an assertion in  
12 evidence before me that Mr. Armstrong has founded a religion?

13 (Pause)

14 MR. GREENE: You should give credence to that.

15 THE COURT: Is it -- is such evidence before me?

16 MR. GREENE: Not to my knowledge.

17 THE COURT: Okay. Then I shouldn't give credence to  
18 anything that's not before me. Go ahead.

19 MR. GREENE: I mean, I know it's been an issue in  
20 the Yanny case but I --

21 (Pause)

22 MR. GREENE: One of the points that I'm addressing  
23 is that the determination of when somebody is adverse to or  
24 aligned against Scientology is a subjective determination.  
25 And the very subjectivity of that determination makes an  
26 enforceable order impossible. It's impossible to draft  
27 something that sufficiently incorporates and that -- or that  
28 narrowly -- that -- that properly defines language that's as

1 broad as that. And ultimately the determination of who is  
2 aligned against or adverse to is in Scientology's mind. And  
3 its subjectivity makes it impossible to enforce as to  
4 Armstrong.

5           The similar argument as to -- as to what are his  
6 experiences -- talking about seventeen years of a man's life.  
7 What are his experiences with Scientology? He is supposed to  
8 say, if he goes into therapy he can't talk about what happened  
9 in Scientology, when he was in Scientology. And these -- that  
10 point in the -- and the free speech point, free association  
11 point and the freedom of employment points all relate to the  
12 element which has to be satisfied before an agreement can  
13 specifically enforced by injunction, which is that it must be  
14 fair to the defendant. These provisions are not fair  
15 provisions.

16           Moreover, and -- and without any doubt one-sided and  
17 unfair is the fact, and it's in evidence before the Court,  
18 that Scientology has been free to characterize Armstrong in  
19 whatever way it decides as -- as an agent provocateur of the  
20 CID of the IRS who was scheming to plant phony documents in  
21 Scientology files which then would be discovered by the IRS in  
22 conducting a raid.

23           And so Armstrong is supposed to wait around until  
24 somebody subpoenas him to be able to address the assault that  
25 he has on his reputational interest?

26           THE COURT: Well, would he have to do that or could  
27 he just say, I didn't find those, I understand that somebody  
28 is saying --

1 MR. GREENE: No, he couldn't; not by --

2 THE COURT: -- that I did.

3 MR. GREENE: -- the terms of this agreement.

4 THE COURT: Why? Show me --

5 MR. GREENE: Because --

6 THE COURT: Show me where the agreement prohibits  
7 that.

8 MR. GREENE: It talks about his experiences in  
9 Scientology.

10 THE COURT: Just refer me to line and page if you  
11 can --

12 MR. GREENE: Okay.

13 THE COURT: -- so that we can get it.

14 MR. GREENE: Page 7 of the agreement.

15 THE COURT: Yes, sir.

16 MR. GREENE: About two inches down, the line that  
17 starts on the left-hand side, "Plaintiff further agrees that  
18 he will maintain strict confidentiality --

19 THE COURT: Okay.

20 MR. GREENE: -- and silence."

21 THE COURT: Oh, I see what you mean. So if -- your  
22 theory is that somebody might say, listen Armstrong, there  
23 were six or seven ashtrays around here and now there are none  
24 and we think that Armstrong is the thief. And your view is  
25 that Armstrong would have to remain more or less mute --

26 MR. GREENE: No, no. That's -- with all due  
27 respect, that's a terrible example and it's not what I mean to  
28 convey.

1 THE COURT: Tell me the situation that you're  
2 talking about.

3 MR. GREENE: The situation is Scientology in other  
4 litigations filed declarations in some cases and papers in  
5 others wherein it has characterized Armstrong in the way that  
6 I just did. I'm not making it up out of --

7 THE COURT: And your theory is that Armstrong ought  
8 to be able to come in to those other lawsuits and say, listen,  
9 I understand that somebody's been saying something bad about  
10 me, let me tell you what really happened?

11 MR. GREENE: My --

12 THE COURT: Or he ought to be able to say, listen, I  
13 understand that somebody is saying something bad about me, I'm  
14 not a party to this case but here's some other things that I  
15 know about this plaintiff in this case, they are the following  
16 things going back to nineteen -- and then you just pick the  
17 year you want to start in. And then he elaborates on that  
18 information. Which of those things do you maintain that he  
19 ought to be able to do?

20 MR. GREENE: Well, I maintain he ought to be able to  
21 do both of those things. And the slant that I would put on it  
22 --

23 THE COURT: Which of those things do you maintain he  
24 ought to be able to do without violating the language you  
25 refer to on page 11 of the agreement?

26 MR. GREENE: My point -- my point is that  
27 Scientology can't have it both ways. They can't -- they can't  
28 enter an agreement like this and then turn around and make

1 allegations about Armstrong, and then say, hey Armstrong, if  
2 you in any way rebut these, you're violating the settlement  
3 agreement. That's unfair on its face. It's unfair to  
4 Armstrong and it adversely impinges on his reputational  
5 interest.

6 THE COURT: Okay.

7 MR. GREENE: It's not fair to have it both ways.

8 THE COURT: At 11:00 o'clock I asked you to conclude  
9 your argument in ten minutes. It's now seventeen minutes  
10 after 11:00. Are you finished?

11 (Pause)

12 MR. GREENE: Almost finished.

13 THE COURT: Will you be finished by twenty minutes  
14 after 11:00?

15 MR. GREENE: Sure will be.

16 THE COURT: All right, that will be double the time  
17 that I had originally asked you to keep yourself within. Go  
18 right ahead.

19 MR. GREENE: Thank you. Counsel concedes that 7-G  
20 is broad. I submit it's incapable of enforcement. Counsel  
21 says there are no unclean hands. That's incorrect.  
22 Scientology is trying to have it both ways. The very  
23 complaint in this case, they make these allegations about  
24 Armstrong that are a violation of the very agreement which  
25 they seek to enforce. As characteristic of this agreement and  
26 characteristic of the way that Scientology does business and  
27 wants this Court to cooperate in doing business is to -- is to  
28 have it both ways. In our litigation system there are sides

1 and each side is entitled to fight clean, disciplined and hard  
2 against the other side with the best evidence that's available  
3 to them. This agreement skews that. This agreement is  
4 designed to prevent that so as to provide Scientology with an  
5 unfair advantage when people come to court seeking justice  
6 because they've been hurt by the practices of Scientology.  
7 And appellate cases are replete with examples like that.

8           So Scientology's hands are dirty. We are in a court  
9 of equity. They cannot say, Judge, please you know, enforce  
10 what we think Armstrong has done wrong but ignore what we have  
11 done to invite that.

12           There has not been any argument regarding any  
13 ratification of the agreement that were -- that was in the  
14 papers. There are cases that we -- but what Mr. Wilson has --  
15 has said but not knowing that was going to be addressed I  
16 don't have those cases.

17           All of the cases that we cite with respect to the  
18 public policy issue, none of them have, talk about how it's --  
19 if you can subpoena somebody it makes -- it sanitizes an  
20 otherwise illegal agreement. What this agreement is is a  
21 payment of money in order to prevent testimony. And that is  
22 void as a matter of public policy. And I submit that what  
23 this Court should do and what the agreement itself provides  
24 for is to find those provisions that Scientology seeks to  
25 enforce unenforceable and illegal. And let the rest of the  
26 agreement settling Armstrong's cross complaint stand.

27           Finally with respect to the confidentiality of -- of  
28 keeping the agreement itself secret. It would be ridiculous

1 for this Court to issue an order like that when this agreement  
2 is a matter of public record. Scientology first, in the  
3 inception of this case, went to two judges in Marin Superior  
4 Court, first trying to seal the entire proceedings and second,  
5 trying to seal the settlement agreement. They failed both  
6 times and were told, if you want to sue on the agreement it's  
7 got to be a matter of the public record.

8 And so now Scientology says, well Armstrong is  
9 violating the agreement and it's ridiculous that it's a matter  
10 of public record. It's a matter of public record.

11 THE COURT: Okay. Thank you, Mr. Greene. Mr.  
12 Wilson, I have some questions and that would be your rebuttal.

13 Does your client have any interest in keeping the  
14 settlement agreement secret, the last point that Mr. Greene  
15 made?

16 MR. WILSON: Well, Your Honor, we have an interest  
17 in not -- not in keeping it secret any more; it obviously is a  
18 matter of public record. We'd like to prevent its wider  
19 distribution. But I cannot stand up here and tell you that in  
20 fact the agreement isn't a matter of public record.

21 THE COURT: How about Mr. Greene's point that your  
22 client's sole remedy was before Judge Geernaert by way of an  
23 evidentiary hearing?

24 MR. WILSON: My reply to that, Your Honor, is that  
25 the transcript of Judge Geernaert's -- of the hearing before  
26 Judge Geernaert is quite extensive, and a review of it makes  
27 clear what really happened. The first thing that happened was  
28 Judge Geernaert said, well I can't enforce this agreement

1 without an evidentiary hearing. You parties come back at 2:00  
2 o'clock. So they came back at 2:00 o'clock and then the --  
3 and then the jurisdictional argument was raised and they spent  
4 approximately sixty pages on the jurisdictional argument. And  
5 at the conclusion of it Judge Geernaert ruled that he didn't  
6 have jurisdiction. Mr. Hertzberg asked him. This is on page  
7 63 of the transcript.

8 READING:

9 "MR. LAZIEST: I take it Your Honor is  
10 denying our motion then on the basis of lack of  
11 jurisdiction.

12 "THE COURT: I think that is what it comes  
13 down to."

14 Judge Geernaert made no factual findings about any  
15 of the issues that you're deciding here today.

16 THE COURT: He's not talking about factual findings.  
17 He's saying look, there's a provision in the agreement that  
18 says that the Court reserves power to enforce. The Court made  
19 a jurisdictional determination but if you wanted to do  
20 anything what you had to do was to bring an evidentiary  
21 hearing on before Judge Geernaert. His accusation is not so  
22 submerged. He's saying, well but you know he's judge-  
23 shopping.

24 Judge Geernaert indicated some views in a very  
25 preliminary sense about the agreement. Your client recognized  
26 that your client was perhaps in an unfavorable environment and  
27 decided, well look, let's just get out of Judge Geernaert's  
28 court and see if we can find ourselves another judge.



1 MR. WILSON: Your Honor, I will address that  
2 argument. I misunderstood your question.

3 Judge Geernaert ruled that the Court had no  
4 jurisdiction to enforce the agreement as a judicially ordered  
5 settlement. It was not an order that we had no right to seek  
6 for breach of contract a remedy including specific performance  
7 which the agreement specifically provides for in paragraph --  
8 I believe it's paragraph 20. I can give you the paragraph  
9 reference to it if you like.

10 THE COURT: No, I'm familiar with the agreement.  
11 Let's move on to another point. Mr. Greene makes the argument  
12 that the liquidated damage provision constitutes an adequate  
13 legal remedy. And he says the parties have in essence agreed  
14 to that.

15 MR. WILSON: First, Your Honor, that provision, the  
16 liquidated damages provision appears not in all the paragraphs  
17 we're talking about. It appears in the paragraph -- I'll get  
18 the --

19 THE COURT: Well, it's in paragraph no. 7-E.

20 MR. WILSON: It's in 7-E but it's not in G, and it's  
21 not in the voluntary -- and so clearly it doesn't apply to the  
22 paragraphs its not in. Secondly, there's nothing that says we  
23 can't seek liquidated damages for a prior breach while seeking  
24 to enjoin a future breach. Specifically when you look at the  
25 provisions of the paragraph which specifically give us the  
26 right to injunctive relief.

27 (Pause)

28 MR. WILSON: For example, if you look at paragraph

1 H, the agreement not to testify, et cetera and paragraph G,  
2 the agreement not to voluntarily assist, those do not have  
3 liquidated damages provisions in them. So you can't even make  
4 the argument with respect to those paragraphs.

5 And the injunctive --

6 THE COURT: Mr. Greene makes the argument that -- go  
7 ahead, what were you going to say about the injunctive  
8 paragraph?

9 MR. GREENE: The injunctive paragraph is paragraph  
10 20. It specifically says, "this agreement may be enforced by  
11 any legal or equitable remedy including but not limited to  
12 injunctive relief or declaratory judgment where appropriate."

13 THE COURT: Let's go to another point that I wanted  
14 to ask you about. Mr. Greene makes the argument that there  
15 has been protracted delay on the part of your client which he  
16 says constitutes an indication that the gravity of the harm  
17 that your client is complaining about is exaggerated in this  
18 proceeding.

19 MR. WILSON: Your Honor, the -- that may be his  
20 argument. His argument may also be latches. Whichever one it  
21 is --

22 THE COURT: No, it's not latches. No, he was  
23 scrupulous to avoid the point of latches. He recognizes, he  
24 was very, very astute about it.

25 MR. WILSON: Okay, in that case the breeches  
26 occurred, the first declarations were filed in July. And then  
27 there was a declaration filed in September. This motion was  
28 filed in October. And those are the facts. I don't believe

1 that that delay indicates that we didn't believe the harm was  
2 sufficient to get injunctive relief. It takes a certain  
3 amount of time to prepare papers. It's certainly not a  
4 protracted delay. We're talking at the most between July 17th  
5 and October -- it's what? Three months at the most.

6 THE COURT: He makes the point that there is no  
7 morally defensible distinction between permitting compelled  
8 testimony and the voluntary giving of declarations. He says  
9 in both situations the ultimate result is either competent or  
10 incompetent evidence before a finder of fact, usually a trial  
11 court. He says for you to draw some kind of an artificial  
12 distinction really is an indication first of all of moral  
13 weakness in your client's position which ought to be reflected  
14 in the outcome. And secondly, it's an indication that what  
15 your client is doing is trying, to the extent possible, not to  
16 distance itself from an adverse litigant, namely Armstrong but  
17 to suppress and to contrive and to control information.

18 MR. WILSON: First, Your Honor, there is a  
19 difference between a declaration which is crafted, in fact  
20 drafted by Mr. Armstrong and testimony which appears as a  
21 result of a deposition which is subject to cross examination.  
22 Now I make a distinction between those two and I believe there  
23 is a qualitative difference between those two.

24 Second, there's also the element of quote "backstage  
25 help." In other words, it's not just the testimony, it's also  
26 the cooperation. And there is a difference between that.

27 Finally, whatever Mr. Greene may feel about the  
28 moral rightness or wrongness of it, I don't believe that's an

1 issue before this Court.

2 THE COURT: Well, pardon me, that moves into the  
3 next point that he makes. He says, look, to be sure, the  
4 litigants cite cases which have some kind of potential  
5 pertinence to this case. They talk about public policy, they  
6 talk about confidentiality. But in making that determination  
7 as a practical matter, deciding rather than just talking, what  
8 you have to do, his argument is, is weigh the weight of the  
9 inhibition on communication.

10 When the inhibition on communication restricts  
11 somebody from communicating about trade secrets you have one  
12 kind of a situation. There the proprietor of the trade secret  
13 has presumptively a very, very substantial right in preserving  
14 confidentiality. This after all is information which is  
15 almost in the nature of property; it's something which  
16 presumptively is lawfully acquired; it is something that  
17 presumptively furthers a very significant interest in our  
18 society; the interest in conducting business in a certain way;  
19 it's interest which -- it's information which was turned over  
20 to the other person under conditions of secrecy; it's  
21 information which is guarded and protected in a certain way,  
22 kept confidential, and so forth.

23 So that when somebody says, look, you can restrict  
24 somebody from disclosing trade secrets, Greene's point is  
25 yeah, I'll go along with that, that's an easy case. But he  
26 says in this case what you have is something different. Here  
27 you have at best for your client warring constitutional  
28 rights. And as Greene sees it, a constitutional right on the

1 part of Armstrong counterbalanced by no right of that gravity  
2 on the part of your client, the plaintiff.

3           Moreover, he says the information that is being  
4 suppressed in the trade secret case is information which the  
5 trade secret proprietor owns, at least as the law  
6 fictionalizes that construct. The information that's being  
7 suppressed in this case, however, is information about  
8 extremely blame-worthy behavior of the plaintiff which nobody  
9 owns; it is information having to do with the behavior of a  
10 high degree of offensiveness and behavior which is meritorious  
11 in the extreme.

12           It involves abusing people who are weak. It  
13 involves taking advantage of people who for one reason or  
14 another get themselves enmeshed in this extremist view in a  
15 way that makes them unable to resist it apparently. It  
16 involves using techniques of coercion. His argument is, when  
17 you now begin to balance so as to make a determination about  
18 what has to go into the calculus that gives rise to a public  
19 policy assessment, you've got to balance that.

20           MR. WILSON: Well Your Honor, first of all I didn't  
21 say that the employment case was on all fours with this case.  
22 Cases that we rely on that are close to this case are the ones  
23 we've already discussed.

24           Second of all, there is a public policy at work  
25 here. And that policy is settlement agreements. And Mr.  
26 Heller's declaration is very clear about why this case was  
27 settled the way it was. Mr. Armstrong was running around  
28 giving declarations in his own litigation, previous litigation

1 and was essentially in the business of helping litigate  
2 against the Church. And that's why these provisions are in  
3 here. And there's a very strong public policy in favor of  
4 settlement agreements as well.

5 Now, your point about somehow because Mr. Armstrong  
6 says that the Church did all these heinous things and Judge  
7 Breckenridge entered this decision -- by the way, in which by  
8 the way he also said that Mr. Armstrong stole documents and  
9 then said Mr. Armstrong was privileged because he could  
10 protect himself.

11 THE COURT: Now the two of you represent your  
12 clients. But you don't have to answer for their apparent  
13 conduct.

14 MR. WILSON: But --

15 THE COURT: There appears to be in the history of  
16 their behavior a very, very substantial deviation between  
17 their conduct and standards of ordinary, courteous conduct and  
18 standards of ordinary, honest behavior. They're just way off  
19 in a different firmament.

20 MR. WILSON: Well Your Honor --

21 THE COURT: They're the kind of -- it's the kind of  
22 behavior which makes you sort of be sure you cut the deck and  
23 be sure you've counted all the cards. If you're having a  
24 friendly poker game you'd make sure to count all the chips  
25 before you dealt any cards.

26 MR. WILSON: Your Honor, I'm troubled by even  
27 dealing with this. And the reason I'm troubled with it is I  
28 don't believe it's relevant to this. Because what that says

1 is Mr. Armstrong or anybody can come into court and say, about  
2 any organization, this is a bad organization. I say it's bad  
3 and here is -- and you saw what they tried to file.

4 THE COURT: Let's assume that this is the agreement.  
5 Let's assume that the agreement was with me and let's assume  
6 that what I knew about was criminal behavior on your part.  
7 And you said, Judge look, you know that I've been stealing  
8 money and you know that I've been molesting young girls and  
9 you know that I've been engaging in other criminal behavior;  
10 don't tell anybody about it, I'll give you some money for it.  
11 Now obviously if you're subpoenaed we understand that, you're  
12 going to have to testify. But just don't tell anybody.  
13 That's one kind of case.

14 The other kind of case is a case in which I go to  
15 work for you and I'm mowing your lawn and I just happen to  
16 look through your window and I notice that you're in a  
17 compromising position with a woman whom you're not married to.  
18 And you say, oh for heaven's sake judge, don't tell my wife.  
19 I'll tell you what. I'll send you a case of Scotch if you  
20 just don't tell her. That's another kind of case.

21 Greene's point is that the case that you're arguing  
22 is the first case.

23 MR. WILSON: Well Your Honor, I disagree with that  
24 because there's no conduct that is alleged that's -- that I  
25 see that's criminal. What we have is a lot of -- and whatever  
26 -- and if it is, it's a bare allegation. It's -- and I go  
27 back to what I was saying and I apologize for -- for  
28 interrupting you. That you come -- they come into court and

1 file stuff this high full of everything bad that they can ever  
2 think of that anybody ever wrote or said about Scientology.  
3 And the purpose of doing that is to poison the record, the  
4 poison the mind of anybody making any decision into saying  
5 this is a bad organization. And because it's a bad  
6 organization --

7 THE COURT: That might be their purpose  
8 subjectively. My purpose in dealing with the evidence has  
9 nothing to do with that. My purpose in dealing with the  
10 evidence is to deal with precisely the point that I posited to  
11 you. Which is, whether one, in making a determination about  
12 the extent and contour of the public policy associated with  
13 suppressing behavior on the part of Armstrong has to look to  
14 the content of what Armstrong might say if he were not  
15 suppressed. It's the two cases I gave you. It's the you-and-  
16 the-woman-not-your-wife case versus the you-and-the-crime  
17 case.

18 MR. WILSON: Well Your Honor, first of all, if your  
19 example is you're a judge and I'm an attorney, then clearly  
20 that's a different case because you would have a duty, I  
21 believe, if you knew I was engaged in criminal conduct.

22 THE COURT: No, I'm just a man over there mowing  
23 your lawn. I just happen --

24 MR. WILSON: That --

25 THE COURT: -- to know two things. You refer to me,  
26 pardon me, you refer to me by the name "judge" in the same way  
27 you'd refer to the actor Judge Rienhold by the name "judge"  
28 because that happens to be my first name in this particular



1 anecdote. Go ahead.

2 MR. WILSON: Your Honor, I don't think that's this  
3 case and I haven't -- I haven't looked at that question.

4 THE COURT: Look at it now. That's the argument.  
5 That is a point of significant moral impact that emerges from  
6 the evidence.

7 MR. WILSON: I think that in that case, if there is  
8 a legal conduct, if it's clear that what I'm doing is paying  
9 you not to disclose illegal conduct that are crimes, that  
10 contract is the litigant's public policy. But that's not this  
11 case.

12 THE COURT: Why?

13 MR. WILSON: Because the only thing that Mr.  
14 Armstrong is saying -- he's not saying, look, my contract was  
15 -- was to not disclose illegal conduct. The contract that Mr.  
16 Armstrong entered into was not to disclose certain experiences  
17 that he'd had, not to assist people adverse to Scientology in  
18 litigation. The only way that you get there is by, is first  
19 by finding that at the time the contract was entered into  
20 Armstrong had knowledge of illegal conduct and specifically  
21 this agreement was entered into to prevent him from disclosing  
22 it.

23 Now two things. There's two problems with that.  
24 One, there's no evidence that at the time this agreement was  
25 entered into Armstrong had knowledge of illegal conduct that  
26 the agreement was entered into to prevent from disclosing.  
27 Number two, the agreement allows him to testify pursuant to  
28 subpoena.

1 (Pause)

2 MR. WILSON: And there's nothing in the agreement  
3 that says Armstrong cannot report crimes to authorities. That  
4 would be, I believe, a violation of public policy.

5 THE COURT: Well, let's examine that. Take a look  
6 at Section -- I think it's 7-C, Mr. Wilson. Yes, it's 7-C.  
7 It's on page no. 6.

8 MR. WILSON: I have it.

9 THE COURT: You see that there's a reference there  
10 to governmental entity. That has to do with the attorney fee?

11 MR. WILSON: Right.

12 THE COURT: Okay. Now go to 7-G. This is on page  
13 no. 10. That refers to any person adverse to Scientology.  
14 Are you with me so far?

15 MR. WILSON: 7-G?

16 THE COURT: Yes.

17 MR. WILSON: Yes.

18 THE COURT: Then go to 7-H.

19 MR. WILSON: Yes. I'm there.

20 THE COURT: Does that carve out an exception for  
21 governments?

22 MR. WILSON: No.

23 THE COURT: Does it include governments in the  
24 inhibition? In other words, is that a group of persons whom  
25 you would be restricted from communicating with?

26 MR. WILSON: It would depend if they were -- if they  
27 had an adverse interest and --

28 THE COURT: Well, they're going to have an adverse

1 interest. Let's just say that the government is somebody  
2 who's going to come in and prosecute your client or one of the  
3 people mentioned in what I'll call paragraph 1 of the --

4 MR. WILSON: Then Mr. Armstrong --

5 THE COURT: -- the protected people.

6 MR. WILSON: Then Mr. Armstrong cannot voluntarily  
7 cooperate with them.

8 THE COURT: Well, then that gets you into the jam  
9 that you were trying to get out of, doesn't it?

10 MR. WILSON: No, it doesn't.

11 THE COURT: When you said look, this doesn't  
12 restrict him from making reports to, you said, the  
13 authorities. But it does restrict him from making reports to  
14 the authorities now, according to your --

15 MR. WILSON: What I --

16 THE COURT: I at Wilson at 1135 is of the view that  
17 it doesn't restrict him from making reports to the authorities  
18 but Wilson 1140 is of the opinion that it does.

19 MR. WILSON: Your Honor, I stand corrected. You're  
20 correct on that.

21 THE COURT: So that means that that can't enforced,  
22 right?

23 MR. WILSON: No, it can --

24 THE COURT: What does it mean?

25 MR. WILSON: -- be enforced because at the time it  
26 was entered into there's not evidence that Mr. Armstrong knew  
27 about crimes and that this was designed to prevent him from  
28 testifying or --

1 THE COURT: So you're saying --

2 MR. WILSON: -- giving evidence about crimes.

3 THE COURT: So you're saying that factually this is  
4 the -- this is Wilson with the woman-not-his-wife case. Or at  
5 least that's the factual record that's been made out so far in  
6 weighing these equities.

7 MR. WILSON: Yes.

8 THE COURT: What about the interpretational or  
9 constructional problems that Mr. Greene talked about? Who is  
10 quote "adverse" end quote to Scientology --

11 MR. WILSON: Well.

12 THE COURT: -- and what are Armstrong's experiences?  
13 What is it that he's supposed to say or not say?

14 MR. WILSON: Well, Your Honor, the point about  
15 whether Mr. Armstrong --

16 THE COURT: Let's just assume for a moment, just to  
17 give you an example, that I am -- I'm Cardinal Manning.  
18 Armstrong shows up one day and he says, oh it's good to see  
19 you, Cardinal. And I say, hello Mr. Armstrong, how are you  
20 doing? And do whatever cardinals do when they meet people had  
21 wish him well and so forth. And during the course of that he  
22 says, you know, I was involved once in a religion and I say,  
23 you know, one of the precepts of the religion that i belong to  
24 and that I'm a functionary in is that the church that I'm a  
25 member of is the only true church. Am I adverse now?

26 MR. WILSON: The cardinal said that or Armstrong  
27 said it? I lost you.

28 THE COURT: The cardinal said it.

1 MR. WILSON: The cardinal said it.

2 THE COURT: And besides you know the position that  
3 different religious groups take anyway. Let's say --

4 MR. WILSON: No, I don't think -- I don't think that  
5 makes --

6 THE COURT: Let's say that I'm an imam in Teheran,  
7 I'm a Muslim. My view is that --

8 MR. WILSON: I don't -- I don't think that that  
9 makes you adverse to Scientology.

10 THE COURT: So you think "adverse" means --

11 MR. WILSON: It means --

12 THE COURT: -- what? What is the -- the words  
13 "adverse to" if taken at their -- well, let me just step back  
14 and tell you. There is an inescapable quality of perceived  
15 persecution throughout this case. I mean just everybody feels  
16 they're being persecuted by everybody else.

17 MR. WILSON: That's true.

18 THE COURT: And your client or its predecessors or  
19 organizations that are related to it apparently set up  
20 elaborate mechanisms to deal with real or imagined  
21 persecutions. In effect persecuting the alleged persecutor.  
22 In that climate who is adverse --

23 MR. WILSON: Well, Your Honor --

24 THE COURT: -- to the people referred to in the  
25 agreement of December 1986, Section 1.

26 MR. WILSON: To me this means an adverse party in  
27 some kind of proceeding. That's what it means to me. And I  
28 think that if there's a problem with the language --

1 THE COURT: So should it be restricted then to  
2 litigants only?

3 MR. WILSON: Well, I think that the order which does  
4 not have to track exactly the language of the agreement -- I  
5 mean, there is a difference between an agreement and an order  
6 compelling performance. The order can be drafted to apply to  
7 litigants, adverse litigants or parties adverse to Scientology  
8 in arbitrations or other quasi-litigation proceedings. That's  
9 what it's about.

10 THE COURT: What are the defendant's experiences?

11 MR. WILSON: That is -- that really means what  
12 happened to him while he was in Scientology.

13 THE COURT: So how about the problem that --

14 MR. WILSON: That doesn't mean --

15 THE COURT: -- Mr. Greene talks about? He says,  
16 I've got a belly-ache and he goes to somebody and they say, we  
17 understand your belly hurts, Armstrong; your problem is not  
18 your belly, your problem is in your head. And so he says, all  
19 right fine, I better go somewhere and get that dealt with.  
20 And he goes somewhere and somebody says, well what's up? How  
21 do you feel? And he says, oh I feel pretty rotten. I feel --  
22 and then he describes any number of subjective and emotional  
23 symptoms. And the person interrogating him says, well where  
24 do you get these ideas? And what does he do? Does he sort of  
25 sit there or he says just a second, I have to review this  
26 agreement?

27 MR. WILSON: You're asking me, is that an experience  
28 in Scientology?

1 THE COURT: That's right.

2 MR. WILSON: Well, if it's an experience in  
3 Scientology and he's talking to someone like a psychiatrist or  
4 a priest, the various privileges would apply and the agreement  
5 wouldn't apply to those.

6 THE COURT: Where do you get that out of the  
7 agreement?

8 MR. WILSON: The agreement doesn't specifically say  
9 it but those are privileged. We couldn't enforce the  
10 agreement in those contexts and wouldn't try to, and are not  
11 trying to now. I think you have to look at what we're trying  
12 to enforce. And I -- I recognize that Your Honor has a very  
13 good understanding of the record and what's going on here, and  
14 also that it's very -- you can think of hypotheticals to take  
15 things to an extreme, as I said earlier, where an agreement,  
16 yes, you could construe it to apply to that.

17 It's possible to say, yes this agreement would apply  
18 to that. We don't intend to apply to it. We would believe  
19 that's a privileged communication and we couldn't enforce it.

20 (Pause)

21 THE COURT: Go right ahead with your agreement. It  
22 will conclude in about a minute or two.

23 MR. WILSON: I --

24 THE COURT: Those are the questions I have for you.

25 MR. WILSON: Those are the questions? Then I only  
26 have one further comment and that has to do with the questions  
27 that you were asking Mr. Greene about whether you have to find  
28 -- excuse me, the damages remedy inadequate.

1           We're entitled to the injunction under 526(1), (2),  
2 (3), (4), (5), and (6). And those are not all combined. You  
3 don't have to find every single one of those. Just one. So  
4 -- and just briefly, one is where it appears by the complaint  
5 the plaintiff is entitled to the relief, and the relief  
6 includes the injunction. I think we're entitled to that here.  
7 We've shown the breeches. The agreement allows us to get an  
8 injunction.

9           Two, which talks about irreparable injury and four,  
10 which talks about when the pecuniary compensation would not  
11 afford relief, and five, where it would be difficult to  
12 ascertain the amount of compensation are pretty much  
13 considered together. In other words, you really can't  
14 consider those separate because usually where you've got one,  
15 you've got more. And where you don't have them, you don't  
16 have any of them. And here we have them. Because the  
17 reputation damages that could occur from Mr. Armstrong  
18 disclosing would be irreparable injury. They'd also be very  
19 hard to ascertain damages for. And that's why the damages  
20 relief wouldn't be appropriate.

21           And so for those reasons all three of those are  
22 appropriate. And six, where the restraint is necessary to  
23 permit -- to prevent a multiplicity of litigation, that's also  
24 present. Because what's going to happen here if Armstrong  
25 isn't restrained, we have a suit against him, that suit goes  
26 to trial, we amend the complaint as of the date of trial to  
27 include all the breeches, we either win or lose. It keeps on  
28 going. We've got to sue him again.



1 THE COURT: But you're going to go to trial, are you  
2 not?

3 MR. WILSON: Absolutely.

4 THE COURT: All right. The matter stands submitted,  
5 counsel. I'll advise you of my decision. I'll do it in  
6 writing and I'll try to do it within the next day or two;  
7 something like that. As rapidly as I can. I recognize my  
8 legal obligations for a prompt decision but I'll vastly exceed  
9 those. I mean, I'll vastly excel over those. I'm not going  
10 to take anything like ninety days to decide this case. I'll  
11 probably decide it in ninety hours.

12 Thank you very much.

13 MR. GREENE: Thank you, Your Honor.

14 MR. WILSON: And Your Honor, thank you for your  
15 patience in listening to us.

16 THE COURT: It's all right. No, happy to do it.

17 PROCEEDINGS CONCLUDED AT 11:50 A.M.

18 (Court Is Adjourned)

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CERTIFICATION

I (WE) CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE ELECTRONIC SOUND RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

PARRIS TRANSCRIPTION  
P.O. BOX 41754  
LOS ANGELES, CA 90041-9998  
(213) 254-4157

GAIL I. PARRIS

OWNER

*Gail I. Parris*  
SIGNATURE OF TRANSCRIBER

7-10-92  
DATE

MAY 30 1992

DEPT. 88

## SUPERIOR COURT OF CALIFORNIA , COUNTY OF LOS ANGELES

Date: May 28, 1992  
 Honorable Ronald M. Sohigian, Judge  
 1

M. Cervantes, Deputy Clerk  
 None (E.R.M.)

BC 052395

(Parties and Counsel checked if present)

Church of Scientology, International

Counsel For  
Plaintiff

vs.

Gerald Armstrong, et al.

Counsel For  
Defendant

No Appearances

**NATURE OF PROCEEDINGS:** RULING ON MATTER TAKEN UNDER SUBMISSION ON MAY 27, 1992

In this matter heretofore taken under submission on May 27, 1992, the court now makes the following ruling.

1 Plaintiff's legal remedies are inadequate insofar as the scope of relief ordered below is concerned, but not otherwise. CCP 526(4) and (5).

2 The threatened acts which are restrained by the order referred to below, but only those threatened acts, would do irreparable harm to plaintiff which could not be compensated by monetary damages. CCP 526(2).

3 On the basis of the instant record, there is a reasonable probability that plaintiff will prevail after trial of this case in the respects restrained by this order. CCP 526(1); cf., San Francisco Newspaper Printing Co., Inc. vs. Superior Court (Miller) (1985) 170 Cal. App. 3d 438.

4 Plaintiff is likely to suffer greater injury from denial of the preliminary injunction the terms of which are set out below than the injury which defendant is likely to suffer if it is granted. See Robbins vs. Superior Court (County of Sacramento) (1985) 38 Cal. 3d 199, 206.

5 The granting of a preliminary injunction in the terms set out below will preserve the status quo pending trial.

## SUPERIOR COURT OF CALIFORNIA , COUNTY OF LOS ANGELES

Date: May 28, 1992  
 Honorable Ronald M. Sohigian, Judge  
 1a

M. Cervantes, Deputy Clerk  
 None (E.R.M.)

BC 052395

(Parties and Counsel checked if present)

Church of Scientology, International

Counsel For  
Plaintiff

vs.

Gerald Armstrong, et al.

Counsel For  
Defendant

No Appearances

**NATURE OF PROCEEDINGS:** RULING ON MATTER TAKEN UNDER SUBMISSION ON MAY 27, 1992

6 Application for preliminary injunction is granted in part, in the following respects only.

Defendant Gerald Armstrong, his agents, and persons acting in concert or conspiracy with him (excluding attorneys at law who are not said defendant's agents or retained by him) are restrained and enjoined during the pendency of this suit pending further order of court from doing directly or indirectly any of the following:

Voluntarily assisting any person (not a governmental organ or entity) intending to make, intending to press, intending to arbitrate, or intending to litigate a claim against the persons referred to in sec. 1 of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986 regarding such claim or regarding pressing, arbitrating, or litigating it.

Voluntarily assisting any person (not a governmental organ or entity) arbitrating or litigating a claim against the persons referred to in sec. 1 of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986.

The court does not intend by the foregoing to prohibit defendant Armstrong from: (a) being reasonably available for the service of subpoenas on him; (b) accepting service of subpoenas on him without physical resistance, obstructive tactics, or flight; (c) testifying fully and fairly in response to properly put questions either in deposition, at trial, or in other legal or arbitration proceedings; (d) properly reporting or disclosing to authorities criminal conduct of the persons referred to in sec. 1 of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986; or (e) engaging in gainful employment rendering clerical or paralegal services not contrary to the terms and conditions of this order.

SUPERIOR COURT OF CALIFORNIA , COUNTY OF LOS ANGELES

Date: May 28, 1992  
Honorable Ronald M. Sohigian, Judge  
1b

M. Cervantes, Deputy Clerk  
None (E.R.M.)

BC 052395

(Parties and Counsel checked if present)

Church of Scientology, International  
vs.

Counsel For  
Plaintiff

Gerald Armstrong, et al.

Counsel For  
Defendant

No Appearances

**NATURE OF PROCEEDINGS:** RULING ON MATTER TAKEN UNDER SUBMISSION ON MAY 27, 1992

The application for preliminary injunction is otherwise denied.

7 The restraints referred to in sec. 6, above, will become effective upon plaintiff's posting an undertaking in the sum of \$70,000 pursuant to CCP 529(a) by 12:00 noon on June 5, 1992.

8 The restraints referred to in sec. 6, above, properly balance and accommodate the policies inherent in: (a) the protectable interests of the parties to this suit; (b) the protectable interests of the public at large; (c) the goal of attaining full and impartial justice through legitimate and properly informed civil and criminal judicial proceedings and arbitrations; (d) the gravity of interest involved in what the record demonstrates defendant might communicate in derogation of the contractual language; and (e) the reasonable interpretation of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986. The fair interpretation of all the cases cited by the parties indicates that this is the correct decisional process. The law appropriately favors settlement agreements. Obviously, one limitation on freedom of contract is "public policy"; in determining what the scope of the public policy limitation on the parties' rights to enforcement of their agreement in the specific factual context of this case, the court has weighed the factors referred to in the first sentence of this section. Litigants have a substantial range of contractual freedom, even to the extent of agreeing not to assert or exercise rights which they might otherwise have. The instant record shows that plaintiff was substantially compensated as an aspect of the agreement, and does not persuasively support defendant's claim of duress or that the issues involved in this preliminary injunction proceeding were precluded by any prior decision.

SUPERIOR COURT OF CALIFORNIA , COUNTY OF LOS ANGELES

Date: May 28, 1992  
Honorable Ronald M. Sohigian, Judge  
lc

M. Cervantes, Deputy Clerk  
None (E.R.M.)

BC 052395

(Parties and Counsel checked if present)

Church of Scientology, International  
vs.

Counsel For  
Plaintiff

Gerald Armstrong, et al.

Counsel For  
Defendant

No Appearances

**NATURE OF PROCEEDINGS:** RULING ON MATTER TAKEN UNDER SUBMISSION ON MAY 27, 1992

9 The court does not dispositively decide the underlying merits of the case except for this preliminary determination. CCP 526(1); Baypoint Mortgage Corp. vs. Crest Premium Real Estate etc. Trust (1985) 168 Cal. App. 3d 818, 823.

10 Plaintiff is ordered give written notice by mail by June 5, 1992, including in that written notice a statement regarding whether plaintiff has or has not posted the undertaking referred to in sec. 7, above, and attaching to that written notice evidence showing that the undertaking has been posted if that is the fact.

DATED: May 28, 1992.

RONALD M. SOHIGIAN

RONALD M. SOHIGIAN  
Judge of the Superior Court

A copy of this minute order is sent to counsel via United States mail this date.